

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** William F, Underwood, II

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** Townwide

**TITLE OF AGENDA ITEM:**

**A RESOLUTION PROVIDING FOR THE ISSUANCE, FROM TIME TO TIME, OF REVENUE BONDS OF THE TOWN TO PAY THE COST OF IMPROVEMENTS TO THE TOWN'S WATER AND SEWER SYSTEM AND TO REFUND BONDS ISSUED HEREUNDER AND OTHER DEBT OF THE TOWN; PROVIDING FOR THE PAYMENT OF SUCH BONDS AND INTEREST THEREON FROM REVENUE DERIVED FROM THE TOWN'S WATER AND SEWER SYSTEM AND CONTRIBUTION CHARGES RECEIVED BY THE TOWN IN CONNECTION WITH THE SYSTEM; AUTHORIZING THE ISSUANCE OF NOT EXCEEDING \$31,000,000 TOWN OF DAVIE, FLORIDA WATER AND SEWER REVENUE REFUNDING BONDS, SERIES 2003 FOR THE PURPOSE OF REFUNDING AND DEFEASING THE TOWN'S OUTSTANDING WATER AND SEWER IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 1992; SETTING FORTH THE RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH BONDS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.**

**REPORT IN BRIEF:**

As the Council may be aware, long term interest rates have dropped significantly over the past year since the Town initiated the project to refund the series 1992 Water and Sewer Revenue Bonds. This resolution authorizes the Town to issue an amount not to exceed \$31 million dollars of revenue refunding bonds series 2003 for the purpose of refunding and defeasing the Town's outstanding water and sewer improvement and refunding revenue bonds series 1992. The document addresses various issues that exist in the series 1992 bonds and provides more flexibility as well as cash savings to the Town in the future. For instance, this resolution eliminates the need for the Town to provide a supplemental pledge of public service taxes to pay the principal and interest on the debt, an improvement over the 1992 bond resolution. Further, refunding the bonds is currently estimated to provide gross savings over the life of the debt in the amount of approximately \$8,765,000 and a present value savings of approximately \$2.28 million dollars or 7.6% of the refunded bonds.

**PREVIOUS ACTIONS:**

n/a

**CONCURRENCES:**

Town Administrator's Office

Utilities Department

Town Attorney

Bond Counsel

Financial Advisor

**FISCAL IMPACT:**

Has request been budgeted? no

If yes, expected cost: \$

Account Name:

Additional Comments:

**RECOMMENDATION(S):**

Motion to approve the resolution.

**Attachment(s):**

Resolution

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**TOWN OF DAVIE, FLORIDA**

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**RESOLUTION NO. \_\_\_\_\_**

**Adopted on August 6, 2003**

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**Authorizing and Securing  
Water and Sewer Revenue Bonds**

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**RESOLUTION NO. 03- \_\_\_\_**

**A RESOLUTION PROVIDING FOR THE ISSUANCE, FROM TIME TO TIME, OF REVENUE BONDS OF THE TOWN TO PAY THE COST OF IMPROVEMENTS TO THE TOWN'S WATER AND SEWER SYSTEM AND TO REFUND BONDS ISSUED HEREUNDER AND OTHER DEBT OF THE TOWN; PROVIDING FOR THE PAYMENT OF SUCH BONDS AND INTEREST THEREON FROM REVENUE DERIVED FROM THE TOWN'S WATER AND SEWER SYSTEM AND CONTRIBUTION CHARGES RECEIVED BY THE TOWN IN CONNECTION WITH THE SYSTEM; AUTHORIZING THE ISSUANCE OF NOT EXCEEDING \$31,000,000 TOWN OF DAVIE, FLORIDA WATER AND SEWER REVENUE REFUNDING BONDS, SERIES 2003 FOR THE PURPOSE OF REFUNDING AND DEFEASING THE TOWN'S OUTSTANDING WATER AND SEWER IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 1992; SETTING FORTH THE RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH BONDS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.**

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

**ARTICLE I**

**STATUTORY AUTHORITY; FINDINGS AND DEFINITIONS**

SECTION 1.01.       **AUTHORITY FOR THIS RESOLUTION.** The Town of Davie, Florida is authorized to adopt this Resolution pursuant to Chapter 166, Part II, Florida Statutes, and other applicable provisions of law.

SECTION 1.02.       **FINDINGS.** It is hereby found and determined that:

(A)     Pursuant to the Prior Resolution (such term and other capitalized terms used herein having the meaning set forth or referred to in Section 1.04 of this Resolution), the Prior Bonds were issued for the purpose of financing the cost of construction and acquisition of extensions, additions and improvements to the System and refunding certain bond indebtedness of the Town.

(B)     The Town hereby determines that it is necessary, desirable and in the best interests of the Town to defease the lien and covenants of the Prior Resolution by irrevocably depositing in trust with an Escrow Agent, in accordance with the terms of art Escrow Deposit Agreement, cash and Escrow Securities acquired with a portion of the proceeds derived from the sale of the Series 2003 Bonds and such other funds of the Town as may be legally available therefor, which cash and Escrow Securities, together with the income and earnings received from the investment thereof, will be sufficient to pay the principal of, premium, if any, and interest on the Prior Bonds as the same become due and payable, all as more fully provided in an Escrow Deposit Agreement relating to same and which irrevocable deposit will be sufficient, in accordance with the terms of the Prior Resolution, to legally defease the covenants and lien of the Prior Ordinance in favor of the Prior Bonds.

(C)     The Town desires to set forth herein the terms and conditions upon which it will issue the Series 2003 Bonds and upon which it may issue Additional Bonds and Refunding Bonds hereunder.



(D) The Pledged Revenue is not pledged or encumbered in any manner except to the payment of the Prior Bonds. The Pledged Revenue may be, and hereby is, pledged to the payment of principal of, premium, if any, and interest on Bonds herein authorized, which lien, upon defeasance of the lien and covenants of the Prior Resolution as provided herein, shall be prior and superior to all other liens thereon except as otherwise provided herein.

(E) The principal of, premium, if any, and interest on the Bonds to be issued pursuant to this Resolution, and all sinking fund, reserve and other payments provided for in this Resolution, shall be payable solely from the Pledged Revenue and, to the extent provided herein, from the monies on deposit from time to time in the Funds and Accounts, and it will not be necessary nor has there been authorized the levy of ad valorem taxes on any property in the Town to pay for same and the Bonds shall not constitute a lien upon any of the properties of the Town, except the Pledged Revenue and the Funds and Accounts, nor shall the Bonds be secured by the credit or taxing power of the Town or the general funds of the Town not expressly pledged hereunder.

SECTION 1.03. RESOLUTION TO CONSTITUTE CONTRACT. In consideration of the acceptance of the Bonds authorized to be issued hereunder or as permitted hereby by those who shall hold the same from time to time, this Resolution and any Series Resolution shall be deemed to be and shall constitute a contract between the Town and such Bondholders, and the covenants and agreements herein set forth to be performed by the Town shall be for the equal benefit, protection and security of the Bondholders, all of which shall be of equal rank and without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other, except as expressly provided therein or herein.

SECTION 1.04. DEFINITIONS. In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used in this Resolution shall have the following meanings, unless some other meaning is plainly intended:

“Account” shall mean any account, and “Accounts” shall mean the accounts, held by the Town and created and designated by this Resolution except any accounts created under the Rebate Fund.

“Accountant” shall mean the independent certified public accountants or firm of independent certified public accountants retained by the Town under the provisions of Section 7.05 of this Resolution to perform and carry out the duties imposed on the Accountant by this Resolution.

“Accreted Value” shall mean, as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond at its initial offering plus the interest accrued on such Capital Appreciation Bond from the date of delivery to the original purchasers thereof to the Compounding Date next preceding the date of computation or the date of computation if a Compounding Date plus, with respect to matters related to the payment upon redemption or acceleration of the Capital Appreciation Bond, if such date of computation shall not be a Compounding Date, a portion of the difference between the Accreted Value as of the immediately preceding Compounding Date (or the date of original issuance if the date of computation is prior to the first Compounding Date succeeding the date of original issuance) and the Accreted Value as of the immediately succeeding Compounding Date, calculated based on the assumption that Accreted Value accrues during any period in equal daily amounts on the basis of a year of 360 days consisting of twelve months of thirty days each. Interest shall accrue on any Capital Appreciation Bond and be compounded periodically at such rate and at such times as provided for in any Series Resolution relating to said Capital Appreciation Bond.

“Additional Bonds” shall mean the Bonds issued pursuant to the provisions of Section 2.07 of this Resolution.

“Amortization Requirements” shall mean the money required to be deposited in the Redemption Fund for the purpose of the mandatory redemption of any Term Bonds issued pursuant to this Resolution, the

specific amounts and times of such deposits to be determined in any Series Resolution relating to such Term Bonds.

“Annual Budget” shall mean the annual budget, as amended or supplemented, adopted or in effect for a particular Fiscal Year as provided in Section 5.03 of this Resolution.

“Appreciated Value” shall mean, with respect to any Capital Appreciation and Income Bond (a) as of any date of computation prior to the Interest Commencement Date, an amount equal to the principal amount thereof on the date of original issuance plus the interest accrued on such Bond from the date of original issuance of such Bond to the Compounding Date next preceding the date of computation or the date of computation if a Compounding Date, such interest to compound periodically at the times and at the rate provided in any Series Resolution relating to said Bond, plus, if such date of computation shall not be a Compounding Date, a portion of the difference between the Appreciated Value as of the immediately preceding Compounding Date (or the date of original issuance if the date of computation is prior to the first Compounding Date succeeding the date of original issuance) and the Appreciated Value as of the immediately succeeding Compounding Date calculated based upon an assumption that Appreciated Value accrues during any period in equal daily amounts on the basis of a year of 360 days consisting of twelve months of thirty days each and (b) as of any date of computation on and after the Interest Commencement Date, the Appreciated Value on the Interest Commencement Date.

“Authorized Officer” shall mean, when used with respect to the Town, the Mayor, Vice Mayor, Clerk, Town Administrator, Finance Director and any other officer of the Town designated from time to time by resolution of the Town.

“Average Annual Debt Service Requirement” shall mean, as of any date, the arithmetic average of the Principal and Interest Requirements in the then current and each succeeding Bond Year.

“Bond” or “Bonds” shall mean the Bonds issued under the provisions of Sections 2.06, 2.07 and 2.08 of this Resolution.

“Bond Registrar” shall mean a bank or trust company, either within or without the State of Florida, designated as such by resolution of the Town, which shall perform such functions as Bond Registrar as are required by this Resolution.

“Bond Year” shall mean the period commencing the first day of October in each year and ending the last day of September the following year.

“Bondholder” (or “owner” or “holder” or “Holder”) shall mean the registered owners of the Bonds as shown on the registration books of the Bond Registrar maintained pursuant to Section 2.04 of this Resolution.

“Capital Appreciation Bonds” shall mean any Bonds as to which interest is compounded periodically on each Compounding Date and which are payable in an amount equal to the then current Accreted Value only at maturity, earlier redemption or other payment date therefor, all as designated by any Series Resolution relating to such Bonds and which may be either Serial Bonds or Term Bonds.

“Capital Appreciation and Income Bonds” shall mean any Bonds as to which accruing interest is not paid prior to the Interest Commencement Date specified in any Series Resolution relating to such Bonds and with respect to which, until said Interest Commencement Date, the Appreciated Value is compounded periodically on each Compounding Date.

“Capitalized Interest” shall mean the amount of Bond proceeds set aside to pay the interest costs on said Bonds that will accrue during the construction of a Project or other specified period in an amount set forth in any Series Resolution relating to such Bonds.

“Clerk” means the Town Clerk, Acting Town Clerk or Deputy Town Clerk of the Town.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

“Compounding Date” shall mean, with respect to any Capital Appreciation Bond and Capital Appreciation and Income Bond, the dates on which interest shall compound, as specified in any Series Resolution relating to such Bonds.

“Construction Fund” shall mean the Fund of that name created and designated by Section 4.01 of this Resolution.

“Consulting Engineers” shall mean the engineer or engineering firm at the time retained by the Town pursuant to Section 7.05 of this Resolution to carry out and perform the duties imposed on the Consulting Engineers by this Resolution.

“Contribution Charges” shall mean the charges imposed by the Town on Persons, including developers and large users, connecting to the System, or reserving capacity in the System, which represent a pro rata share

of the costs of the System which are attributable to the increased demand such additional connections create upon the System; provided, however, that such charges shall be net of any refunds to said persons in accordance with applicable developer or use agreements. Contribution Charges shall include "Capacity Reservation Fees," "Connection Charges," "Service Availability Charges," "Contributions-In-Aid-Of-Construction" and other like charges. Contribution charges shall not include Installation Fees.

"Contribution Charges Fund" shall mean the Fund of that name created pursuant to Section 5.06 hereof.

"Convertible Bonds" shall mean Bonds issued under this Resolution which are convertible, at the option of the Town, into a form of Bonds which are permitted by this Resolution other than the form of such Bonds at the time they were issued.

"Cost" shall mean, as applied to a Project, the aggregate cost of construction of the Project, and all obligations and expenses relating thereto, including all items of cost which are set forth in Section 4.03 of this Resolution.

"Credit Facility" shall mean an irrevocable letter of credit, policy of municipal bond insurance, surety bond, guaranty, purchase agreement, credit agreement or similar facility in which the entity providing such facility irrevocably agrees to provide funds to make payment of the principal of and interest on Bonds when due and, if applicable to a Series of Put Bonds, pay the purchase price of Put Bonds upon their tender by the holders thereof.

"Credit Provider" shall mean the provider of a Credit Facility or Liquidity Facility, if any, with respect to any Series of Bonds.

"Debt Service Account" shall mean the Account of that name created and designated by Section 5.06 of this Resolution.

"Depository" shall mean any bank, savings association or trust company duly authorized by law to engage in its business and to receive Town funds and designated by an Authorized Officer as a depository of monies under the provisions of this Resolution.

"DTC" shall mean The Depository Trust Company, New York, New York, its successors and assigns.

"Escrow Agent" shall mean a bank or trust company, either within or without the State of Florida, having fiduciary powers and designated as Escrow Agent in an Escrow Deposit Agreement and performing such functions as are required by such Escrow Deposit Agreement.

"Escrow Deposit Agreement" shall mean an Escrow Deposit Agreement, by and between the Town and an Escrow Agent, pursuant to which cash and Escrow Securities will be held by the Escrow Agent to provide for payment, in whole or in part, of one or more specified Series of Bonds.

"Escrow Securities" shall mean: (a) Government Obligations; (b) evidences of ownership of proportionate interests in Government Obligations or in future interest or principal payments thereon held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor on the underlying Government Obligations and which Government Obligations are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated; and (c) municipal obligations, the payment of the principal of, interest and redemption premium, if any, on which is irrevocably secured by cash or obligations described in clause (a) or (b) of this definition; provided that the obligations described in clauses (a), (b) and (c) and the securities for the obligations described in clause (c) are not subject to redemption prior to their maturity, other than at the option of the holder thereof, or, to the extent subject to redemption prior to maturity, irrevocable notice of redemption on a specified redemption date has been given and no other redemption may occur prior to maturity other than at the option of the holder thereof.

"Fiduciary" shall mean, collectively, the Bond Registrar and Paying Agent.

"Finance Director" shall mean the person appointed to serve as the Finance Director of the Town and charged with the obligation to carry out the duties of the Finance Director as set forth herein or his designee or the person succeeding to his principal functions.

"Fiscal Year" shall mean the period established as the Town's fiscal year, as the same may be amended from time to time.

"Fund" shall mean any fund, and "Funds" shall mean the funds, held by the Town and created and designated by this Resolution except for the Rebate Fund.

"Government Obligations" shall mean direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America.

"Gross Revenue" or "Revenue" shall mean all fees, rentals, charges and other income, including any investment income from monies held on deposit in any of the Funds or Accounts created hereunder,

received by or accrued to the Town in connection with or as a result of its ownership or operation of the System, including Installation Fees, all as calculated in accordance with the method of accounting used in the official annual financial statement of the Town; provided, however, Gross Revenue shall not include: (i) receipts and revenue derived from the imposition of an ad valorem tax or any other tax the Town is authorized, from time to time, to levy pursuant to applicable law, including any investment income earned thereon or on funds held in the Rebate Fund; (ii) proceeds of Special Assessments or Contribution Charges; and (iii) any grants, contributions or donations, including investment interest thereon.

“Gross Revenue Fund” shall mean the Fund of that name created and designated by Section 5.05 of this Resolution.

“Improvements” shall mean any extension, enlargement, improvement, equipping, construction, renovation, repair, replacement, rehabilitation or acquisition of all or any portion of the System.

“Installation Fees” shall mean the charges imposed on customers for the cost of physically connecting into the System, including but not limited to the cost of excavating, plumbing, installation of meters and landscaping. Installation Fees shall not include Contribution Charges.

“Interest Commencement Date” shall mean, with respect to any particular Capital Appreciation and Income Bonds, the date specified in any Series Resolution relating to such Bonds (which date must be prior to the maturity date for such Bonds) after which interest accruing on such Bonds shall be payable on a periodic basis, with the first such payment date being the applicable Interest Payment Date immediately succeeding such Interest Commencement Date.

“Interest Payment Date” shall mean, with respect to each Bond, such dates on which interest on such Bond is payable as specified in any Series Resolution relating to such Bond.

“Interest Rate Swap” shall mean an agreement in writing by and between the Town and another entity (the “Counterparty”) pursuant to which (i) the Town agrees to pay to the Counterparty an amount, either at one time or periodically, which is determined by reference to a rate of interest or formula and a “notional” amount specified in such agreement, during the period specified in such agreement and (ii) the Counterparty agrees to pay to the Town an amount, either at one time or periodically, which is determined by reference to a different rate of interest or formula but the same “notional” amount specified in such agreement, during the period specified in such agreement.

“Investment Securities” shall mean any of the following, to the extent the same are at the time legal for investment by the Town pursuant to applicable law: (a) Government Obligations; (b) obligations of any of the following federal agencies, which obligations represent the full faith and credit of the United States of America: Export-Import Bank, Farmers Home Administration, General Services Administration, U.S. Maritime Administration, Small Business Administration, Government National Mortgage Association, U.S. Department of Housing and Urban Development, Federal Housing Administration, Fannie Mae and any other agency or person controlled or supervised by, and acting as an instrumentality of, the government of the United States pursuant to authority granted by the Congress, which obligations are unconditionally guaranteed as to principal and interest by such agency or persons; (c) general obligations of any state of the United States or of any political subdivision of any state, which obligations are not rated lower than the three highest rating categories (without regard to numerical or other modifiers) applied by two nationally recognized rating agencies; (d) written repurchase contracts, reverse repurchase contracts or securities lending agreements (collateralized by cash or securities) with any securities dealer that is registered as a dealer under the Securities Exchange Act of 1934, as amended, and is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York, having a net capital of at least \$200,000,000, for obligations of, or unconditionally guaranteed as to the payment of principal and interest by, the United States of America or obligations of, or unconditionally guaranteed as to the payment of principal and interest by, any Bank for Cooperatives, any Federal Intermediate Credit Bank, any Federal Home Loan Bank, the Export-Import Bank of the United States, any Federal Land Bank, the Farmers Home Administration, the Government National Mortgage Association, Fannie Mae, the Federal Financing Bank, or any other agency or instrumentality of, or corporation wholly owned by the United States of America, provided (i) that at the time of entering into any such contract or agreement (A) the market value as determined by such primary dealer (the “market value”) of the obligations subject to any such repurchase contract is at least equal to the purchase price specified in such contract, (B) the purchase price specified in any such reverse repurchase contract is at least equal to the market value of the obligations subject to such contract or (C) the market value of the collateral for any such securities lending agreement is at least equal to the market value of the securities lent, and (ii) such obligations or collateral are held by a Depositary in such manner as may be required to provide a perfected security interest in such obligations or collateral for

the benefit of the Town; (e) deposit accounts, certificates of deposit or similar arrangements with any bank or trust company which is a member of the Federal Deposit Insurance Corporation and any federal or State of Florida savings and loan association whose accounts are insured by the Savings Association Insurance Fund and which are secured in the manner provided by presently applicable State of Florida or federal laws or regulations regarding security for deposit of public funds; (f) evidences of ownership of proportionate interests in Government Obligations or in future interest or principal payments thereon held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor on the underlying Government Obligations and which Government Obligations are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated; (g) corporate debt obligations that are not rated lower than the two highest rating categories (without regard to numerical or other modifiers) by two nationally recognized rating agencies, (h) any agreement for an investment of money with a Qualified Institution (an "Investment Agreement"), which investments (or the debt of the Qualified Institution with respect to any Investment Agreement) must be rated (without regard to numerical or other modifiers) by two nationally recognized rating agencies in the two highest rating categories of such rating agencies for such investments. For purposes of this clause (h), the term "Qualified Institution" means a bank, trust company, national banking association or a corporation subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956, a federal or state branch of a foreign bank pursuant to the International Banking Act of 1978, a savings and loan association, an insurance company or association or any other entity, the unsecured or uncollateralized long-term debt obligations of which, or obligations secured or supported by a letter of credit, contract, agreement or surety bond issued by such institution, are rated not lower than the two highest rating categories (without regard to numerical or other modifiers) by two nationally recognized rating agencies; and (i) such other investment obligations as an Authorized Officer may approve from time to time, which are permitted investments of public funds under Florida law.

"Letter of Representations" shall mean the letter of representations from the Town and other necessary parties, if any, including the Bond Registrar, to DTC with respect to Bonds deposited with DTC in its book-entry system.

"Liquidity Facility" shall mean a letter of credit, policy of insurance, surety bond, guaranty, purchase agreement, credit agreement or similar facility in which the entity providing such facility agrees to provide funds to pay the purchase price of Put Bonds upon their tender by the holders thereof.

"Mayor" shall mean the Mayor of the Town, or in the Mayor's absence or inability to act, any person authorized by the Town Charter of the Town to act in lieu of the Mayor.

"Net Revenue" shall mean for any period, the Gross Revenue for such period less the Operating Expenses for such period.

"Operating Expenses" shall mean the reasonable and necessary expenses of administration, maintenance, repair and operation of the System, including, without limitation, all ordinary and usual expenses of maintenance and repair, all administrative expenses of the Town, insurance premiums, engineering expenses, legal expenses, any taxes which may be lawfully imposed on the System or its income or operations and reserves therefor, and any other expenses required to be paid by the Town under the provisions of this Resolution or by law, as such expenses are determined to have been incurred in accordance with the method of accounting used in the official annual financial statement of the Town including, to the extent so determined, expenses not annually recurring, but excluding (i) any reserves for extraordinary maintenance or repair, (ii) any allowance for depreciation or amortization, (iii) any payments or receipts relating to Interest Rate Swaps, and (iv) any deposits or transfers to the credit of the Funds and Accounts and the Rebate Fund; provided, however, that to the extent such Operating Expenses relate, all or in part, to a future period of time, they shall be prospectively determined by reference to the Annual Budget.

"Operation and Maintenance Fund" shall mean the Fund of that name created and designated by Section 5.06 of this Resolution.

"Outstanding" shall mean all Bonds theretofore delivered except: (a) Bonds deemed to have been paid in accordance with Section 3.05 or Section 12.01 of this Resolution; (b) Bonds in lieu of which other Bonds have been issued pursuant to the provisions hereof relating to Bonds destroyed, mutilated, stolen or lost; (c) Bonds paid, redeemed or delivered to or acquired by the Town for cancellation; and (d) for purposes of any consent or other action to be taken hereunder by the holders of a specified percentage of principal amount of Bonds, the Bonds held by or for the account of the Town.

“Paying Agent” shall mean with respect as to any Series of Bonds, the bank or trust company at which principal, premium, if any, and interest on the Bonds is payable, as designated by the applicable Series Resolution.

“Person” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof, unless the context shall otherwise indicate.

“Pledged Revenue” shall mean the Net Revenue and the proceeds of Contribution Charges received by the Town.

“Principal and Interest Requirements” shall mean the respective amounts which are required in each Bond Year to provide:

- (a) for paying the interest on all Bonds then Outstanding which is payable on each Interest Payment Date in such Bond Year;
- (b) for paying the principal of all Serial Bonds then Outstanding which is payable upon the maturity of Serial Bonds in such Bond Year; and
- (c) for paying the Amortization Requirements, if any, for all Term Bonds then Outstanding for such Bond Year.

For purpose of computing (a), (b) and (c) above, any principal, interest or Amortization Requirements due on the first day of a Bond Year shall be deemed due in the preceding Bond Year.

The following rules shall apply in determining the amount of the maximum Principal and Interest Requirements for any Bond Year:

- (i) the interest rate on Variable Rate Bonds shall be assumed to be (A) the “average rate” of interest on all Variable Rate Bonds during the twelve months ending with the month preceding the date of calculation or such shorter period of time as such Variable Rate Bonds may have been Outstanding or (B) in the event there were no Variable Rate Bonds Outstanding during such twelve month period, then the initial rate of interest. “Average rate” shall mean the rate determined by dividing the total amount of interest paid on all Variable Rate Bonds during the period used in clause (A) hereof by the average principal amount of all Variable Rate Bonds Outstanding during that period;
- (ii) in the case of Put Bonds, the date or dates on which the holder of such Put Bonds may elect or be required to tender such Bonds for payment or purchase shall be ignored if the source for said payment or purchase is a Credit Facility or a Liquidity Facility and the stated dates for Amortization Requirements and principal payments thereof shall be used for purposes of this calculation; provided, however, that during any period of time after the Credit Provider has advanced funds under a Credit Facility or Liquidity Facility and before such amount is repaid, Principal and Interest Requirements shall include the principal amount so advanced and interest thereon, in accordance with the principal repayment schedule and interest rate or rates specified in the Credit Facility or Liquidity Facility;
- (iii) in the case of Capital Appreciation Bonds, the principal and interest portions of the Accreted Value becoming due at maturity or by virtue of an Amortization Requirement in that Bond Year’s calculation shall be included;
- (iv) in the case of Capital Appreciation and Income Bonds, the principal and interest portions of the Appreciated Value becoming due at maturity or by virtue of an Amortization Requirement in that Bond Year’s calculation shall be included;

(v) in the case of Convertible Bonds, the calculations shall be based on the form of the Bonds as of the time of the calculation without regard to any unexercised conversion feature;

(vi) if interest on a Series of Bonds is payable from Capitalized Interest or from other amounts set aside irrevocably for such purpose at the time such Bonds are issued, interest on such Series of Bonds shall be included in Principal and Interest Requirements only to the extent of the amount of interest payable in a Bond Year from amounts other than amounts so funded to pay such interest; and

(vii) to the extent that the Town has entered into an Interest Rate Swap with respect to any Bonds and notwithstanding the provisions of clauses (i) through (vi) above, while the Interest Rate Swap is in effect and the Counterparty has not defaulted thereunder, the interest rate with respect to the principal amount of such Bonds equal to the “notional” amount specified in the Interest Rate Swap shall be assumed to be (A) if the Town’s payment obligations under the Interest Rate Swap are computed based upon a fixed rate of interest, the actual rate of interest upon which the Town’s payment obligations are computed under such Interest Rate Swap and (B) if the Town’s payment obligations under the Interest Rate Swap are computed based upon a variable rate of interest, the average rate of interest for the Town’s payment obligations under the Interest Rate Swap for the prior Fiscal Year for portion thereof while the Interest Rate Swap was in effect or if the Interest Rate Swap was not in effect during such prior Fiscal Year, then the lesser of (x) the initial rate of interest for the Town’s payment obligations under the Interest Rate Swap and (y) the average rate of interest for the prior Fiscal Year under a published variable interest rate index agreed upon by the Town and the Counterparty which is generally consistent with the formula which shall be used to determine the Town’s payment obligations; “average rate” with respect to the Town’s payment obligations for the prior Fiscal Year shall mean the rate determined by dividing the total annualized amount paid by the Town under the Interest Rate Swap in such Fiscal Year or portion thereof by the “notional” amount specified in the Interest Rate Swap for such Fiscal Year.

“Prior Bonds” shall mean the Town of Davie, Florida Water and Sewer Improvement and Refunding Revenue Bonds, Series 1992 issued under the Prior Resolution.

“Prior Resolution” shall mean, collectively, Resolution No. 92-236 adopted on October 21, 1992, as supplemented by Resolution No. 92-241 adopted by the Town on October 29, 1992.

“Project” shall mean Improvements to the System described in a Series Resolution, as same may be modified or amended as provided in Section 4.04 of this Resolution.

“Put Bonds” shall mean all Bonds which, in accordance with any Series Resolution, may be tendered for payment or purchase by or on behalf of the Town prior to the stated maturities thereof.

“Rate Consultant” shall mean the rate consultant at the time retained by the Town pursuant to Section 7.05 of this Resolution to carry out and perform the duties imposed on the Rate Consultant by this Resolution.

“Rate Stabilization Fund” shall mean the fund of that name created and designated by Section 5.06 of this Resolution.

“Rebate Fund” shall mean the fund of that name created and designated by Section 5.06 of this Resolution.

“Record Date” shall mean, with respect to any Bond, the date fifteen days next preceding an Interest Payment Date, whether or not a business day, or the date otherwise designated as such in any Series Resolution relating to said Bond.

“Redemption Fund” shall mean the Fund of that name created and designated by Section 5.06 of this Resolution.

“Refunding Bonds” shall mean the Bonds issued at any time under the provisions of Section 2.08 of this Resolution.

“Renewal and Replacement Fund” shall mean the Fund of that name created and designated by Section 5.06 of this Resolution.

“Reserve Account” shall mean the Account of that name created and designated by Section 5.06 of this Resolution.

“Reserve Account Requirement” shall mean, as of any date of calculation (a) as to all Series of Outstanding Bonds for which separate subaccounts in the Reserve Account have not been established, an amount, in the aggregate, equal to the lesser of: (i) the maximum Principal and Interest Requirements in the current or any future Bond Year for all such Series; (ii) 125% of the Average Annual Debt Service Requirement for all such Series; or (iii) the maximum amount allowed under the Code to be funded from proceeds of the sale of all such Series, and (b) as to a Series of Outstanding Bonds for which a separate subaccount in the Reserve Account has been established, an amount equal to the lesser of (i) the maximum Principal and Interest Requirements in the current or any future Bond Year for such Series; (ii) 125% of the Average Annual Debt Service Requirement for such Series; or (iii) the maximum amount allowed under the Code to be funded from proceeds of the sale of such Series. The Reserve Account Requirement may consist of cash, a Reserve Account Credit Facility, or any combination of the foregoing.

“Reserve Account Credit Facility” shall mean an insurance policy, surety bond, irrevocable letter of credit or other credit agreement or similar facility maintained by the Town in lieu of or in partial substitution for cash or securities on deposit in the Reserve Account.

“Reserve Account Deposit Requirement” shall mean (a) the amount, if any, as determined in a Series Resolution, required to be deposited monthly to the credit of the Reserve Account on account of the Bonds of that Series; plus (b) an amount in each of the twelve successive months beginning with the month following any month in which any amount shall have been withdrawn from the Reserve Account or a deficiency is determined to exist upon valuation of the Reserve Account pursuant to Section 6.02 of this Resolution, equal to one-twelfth of the deficiency created by such withdrawal or resulting from such valuation until such deficiency is made up.

“Resolution” shall mean this Resolution as same may be amended or supplemented from time to time in accordance with Article XI of this Resolution.

“Serial Bonds” shall mean the Bonds of a Series which are stated to mature in annual installments.

“Series” shall mean the Bonds delivered at any one time under the provisions of Article II of this Resolution.

“Series 2003 Bonds” shall mean the Town of Davie, Florida Water and Sewer Revenue Refunding Bonds, Series 2003 issued pursuant to Section 2.06 of this Resolution.

“Series Resolution” shall mean one or more of the resolutions adopted by the Town prior to delivery of a particular Series of Bonds relating to the issuance, sale and payment of such Bonds and which shall provide for the matters required or permitted by this Resolution to be contained therein including, but not limited to, the details set forth in Section 2.02 hereof.

“Sinking Fund” shall mean the Fund of that name created and designated by Section 5.06 of this Resolution.

“Special Assessments” shall mean any and all assessments against property benefited by the System or any part thereof.

“Special Record Date” shall mean, with respect to any Bond, the date established by the Town in connection with the payment of overdue interest on the Bonds pursuant to Section 2.02 of this Resolution.

“System” shall mean, collectively, the water production, transmission, treatment and distribution facilities and sewage collection, transmission, treatment and disposal facilities now owned and operated or hereafter owned and operated by the Town, together with any and all improvements, extensions and additions thereto hereafter constructed or acquired either from the proceeds of Bonds or from other sources, and all property, real or personal, tangible or intangible, now or hereafter owned or used in connection therewith.

“Subordinated Obligation” shall mean an obligation or other evidence of indebtedness described in, and complying with the provisions of, Section 7.14 of this Resolution.

“Surplus Fund” shall mean the Fund of that name created and designated by Section 5.06 of this Resolution.



“Taxable Bonds” shall mean any Bond which states, in the body thereof, that the interest income thereon is not excludable from gross income of the holder thereof for federal income tax purposes or that such interest is subject to federal income tax.

“Term Bonds” shall mean Bonds which shall be stated to mature on one date and for amortization of which mandatory payments are required to be made into the Redemption Account and any other Bonds of a Series so designated in a Series Resolution relating to such Bonds.

“Time Deposits” shall mean time deposits, certificates of deposit or similar arrangements with any bank or trust company which is a member of the Federal Deposit Insurance Corporation and any federal or State of Florida savings and loan association whose deposits are insured by the Savings Association Insurance Fund and which are secured in the manner provided in Section 6.01 of this Resolution.

“Town” shall mean the Town of Davie, Florida.

“Town Attorney” shall mean the Town Attorney of the Town or his designee or the person succeeding to his principal function.

“Town Council” shall mean the governing body of the Town.

“Trustee” shall mean a bank or trust company, either within or without the State of Florida, having fiduciary powers and designated as Trustee by resolution of the Town, which shall perform such functions as Trustee with respect to any Series of Bonds as are required by this Resolution or any Series Resolution.

“Variable Rate Bonds” shall mean Bonds issued with a variable, adjustable, convertible or other similar interest rate which is not fixed in percentage for the entire term thereof at the date of issue, and which may be convertible to a fixed interest rate.

**SECTION 1.05. RULES OF CONSTRUCTION.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words defined in Section 1.04 hereof that appear in this Resolution in lower case form shall have the meanings ascribed to them in the definitions in Section 1.04 unless the context shall otherwise indicate. The words “Bond,” “owner,” “holder” and “person” shall include the plural as well as the singular number.

## **ARTICLE II**

### **AUTHORIZATION, DETAILS, EXECUTION, DELIVERY AND REGISTRATION OF BONDS**

**SECTION 2.01. AUTHORIZATION OF BONDS.** Subject to compliance with this Resolution, the Town is hereby authorized to issue Bonds for one or more of the purposes of paying all or part of the Cost of a Project, refunding existing indebtedness, making deposits to the Funds and Accounts, paying the costs of issuance and paying such other expenses related to the issuance, sale and payment of the Bonds, including payments to Credit Providers, as contemplated by this Resolution. The total principal amount of Bonds that may be issued hereunder is unlimited. Bonds may not be issued under the provisions of this Resolution except in accordance with this Article. One or more Series Resolutions shall be adopted with respect to each Series of Bonds issued hereunder. The principal of, redemption premium, if any, and interest on all Bonds shall be payable solely from Pledged Revenue and the monies on deposit from time to time in the Funds and Accounts.

Upon the issuance of any Series of Bonds, under the terms, limitations and conditions herein provided, the Town shall provide for the funding of the Reserve Account in an amount equal to the Reserve Account Requirement. Such required amount may be paid in full or in part from the proceeds of such Series of Bonds or may be accumulated in equal monthly payments to the Reserve Account over a period of months from the date of issuance of such Series of Bonds, which shall not exceed thirty-six months, as determined by any Series Resolution relating to the Bonds. The Town may establish a separate subaccount in the Reserve Account for any Series of Bonds, including those secured by a Reserve Account Credit Facility, and provide a pledge of such subaccount to the payment of such Series of Bonds apart from the pledge provided herein. To the extent a Series of Bonds is secured separately by a subaccount

of the Reserve Account, the holders of such Bonds shall not be secured by any other monies or Reserve Account Credit Facilities in the Reserve Account.

Notwithstanding anything to the contrary contained herein, the Town may, in a Series Resolution, elect to appoint a Trustee to take custody of one or more of the Funds, Accounts or subaccounts established hereunder and of the Rebate Fund, and to exercise such other functions as the Town may determine appropriate for the protection of Bondholders. The powers and obligations of any such Trustee shall be as set forth in the applicable Series Resolution and in such other agreements as may be entered into between the Town and the Trustee. The powers and obligations delegated to the Trustee in the Series Resolution shall supersede any grant of such powers and obligations to any Person set forth herein with respect to the applicable Series.

**SECTION 2.02. DETAILS OF BONDS.** The Bonds of each Series issued under the provisions of this Resolution shall be designated "Town of Davie, Florida Water and Sewer Revenue Bonds, Series \_\_\_\_\_", in each case inserting the year of issuance and any identifying series letter, subject to such variations or changes as may be deemed necessary or appropriate by bond counsel and specified by a Series Resolution. The Bonds shall be in such amounts, if any, of Serial Bonds and/or Term Bonds and in the form of Capital Appreciation Bonds, Capital Appreciation and Income Bonds, Convertible Bonds, Put Bonds, Variable Rate Bonds or such other form of Bonds which may be marketable from time to time, or any combination thereof, as the Town may determine. Except as otherwise provided in a Series Resolution, the Bonds of each Series issued under the provisions of this Resolution shall be in fully registered form as to principal and interest, without coupons. Except as otherwise provided in a Series Resolution, both the principal of and the interest on the Bonds shall be payable in any coin or currency of the United States of America, or by check or wire payment in such currency, as, at the respective times of payment, is legal tender for the payment of public and private debts.

Payment of interest on any Interest Payment Date with respect to the Bonds, other than Capital Appreciation Bonds and interest on Capital Appreciation and Income Bonds that accrues prior to the Interest Commencement Date, shall be made to the person appearing on the registration books of the Town maintained pursuant to Section 2.04 hereof, as of the close of business on the Record Date. Such interest shall be payable by check or draft on a Paying Agent and shall be mailed to each owner as of the Record Date, at his address as it appears on said registration books, or in the case of an owner of \$1,000,000 or more of Bonds, by wire transfer to a domestic bank account specified in writing by such owner to the Paying Agent.

If and to the extent that the Town shall fail to make a required payment or provision for payment of interest on any Bond on any Interest Payment Date, that interest shall cease to be payable to the person who was the owner of that Bond as of the applicable Record Date. When monies become available for payment of interest on such Bond, the Town shall establish a Special Record Date for the payment of that interest which shall not be more than twenty, nor fewer than ten, days prior to the date of the proposed payment. Notice of the proposed payment and of the Special Record Date therefor shall be mailed to each owner of record on the fifth day prior to such mailing at his address as it appears on the registration books of the Town maintained pursuant to Section 2.04 hereof, not fewer than ten days prior to the Special Record Date. Thereafter, such interest shall be payable to the owners of such Bonds at the close of business on the Special Record Date.

The principal of, and redemption premium, if any, on the Bonds, the Accreted Value of Capital Appreciation Bonds and the Appreciated Value of Capital Appreciation and Income Bonds shall be payable to or upon the order of the owner or his duly authorized attorney or legal representative, as the same falls due, upon the presentation and surrender of such Bonds at the designated corporate trust office of the Paying Agent.

One or more Series Resolutions relating to a particular Series of Bonds shall establish the following:

- (a) the purpose for which the Bonds are to be issued;
- (b) the manner in which the proceeds of the sale of the Bonds are to be applied, including any required deposits to the Funds and Accounts;
- (c) whether the Bonds shall be issued as Serial Bonds, Term Bonds, or a combination of the foregoing and whether such bonds shall be in the form of Capital

Appreciation Bonds, Capital Appreciation and Income Bonds, Convertible Bonds, Put Bonds, Variable Rate Bonds or any other form of Bond which may become marketable from time to time, or any combination of such forms as determined by the Town;

(d) the denomination in which each form of Bond included in the Series may be issued;

(e) the form or forms in which the Bonds shall be issued, which forms may include, without limitation, forms for Capital Appreciation Bonds, Capital Appreciation and Income Bonds, Convertible Bonds, Variable Rate Bonds, Put Bonds and other forms of Bonds authorized to be issued as part of the Series;

(f) the amounts, date, maturity dates (not exceeding the maximum number of years after the date of original issuance as is permitted by law), and interest rate (not exceeding the maximum rate permitted by law) with respect to the Bonds of a Series;

(g) the Interest Payment Dates;

(h) the redemption provisions, if any;

(i) the appointment of Escrow Agents, Paying Agents, Bond Registrars, Trustees, remarketing agents, Credit Providers and the authority to execute agreements relating to the functions to be performed by any such persons, to the extent applicable to any of the Bonds of a Series;

(j) the identity of the purchasers of the Bonds and the authority to execute an agreement with the purchasers pursuant to which the Bonds shall be delivered in return for payment of the purchase price therein set forth;

(k) the approval of any documents to be used in connection with marketing the Bonds;

(l) the creation, within the Funds and Accounts, of subaccounts applicable to the Bonds of a Series;

(m) the Reserve Account Deposit Requirement with respect to the Series;

(n) such other matters as required by this Resolution to be established in a Series Resolution or otherwise deemed appropriate by the Town to be included therein and not inconsistent with the provisions of this Resolution; and

(o) the designated corporate trust office of the Bond Registrar and Paying Agent.

SECTION 2.03. EXECUTION, AUTHENTICATION; BOND FORM. Except as otherwise permitted or required by applicable law, the Bonds shall be signed by, or bear the facsimile signature of, the Mayor, and countersigned by, or bear the facsimile signature of, the Clerk, or in the Clerk's absence, an Authorized Officer of the Town; provided, however, that if

required by law, each Bond shall be manually signed by at least one of such officers. A facsimile of the official seal of the Town shall be imprinted on the Bonds. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds shall cease to be such officer before such Bonds have been authenticated and transferred by the Bond Registrar or delivered by the Town, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such authentication and transfer or delivery occurred. In addition, any Bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of the Bond shall be the proper officers to execute such Bond although at the date of the Bond such persons may not have been such officers.

Only such Bonds as have endorsed thereon a certificate of authentication as set forth in the form of Bond authorized by the Series Resolution relating to same, duly executed by the Bond Registrar, shall be entitled to any benefit or security under this Resolution. No Bonds shall be valid or obligatory for any purpose unless and until such certificate of authentication on the Bond has been duly executed by the Bond Registrar, and such certificate of the Bond Registrar upon any such Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Resolution. The Bond Registrar's certificate of authentication on any Bond shall be deemed to have been duly executed if signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time.

Each Series of Bonds shall be substantially in the form set forth in **Exhibit "A"** hereto. The forms of Bonds may be changed to reflect appropriate provisions for different types of Bonds authorized under this Resolution, including, without limitation, provisions for Capital Appreciation Bonds, Capital Appreciation and Income Bonds, Convertible Bonds, Variable Rate Bonds, Put Bonds and other forms of Bonds authorized to be issued as part of the Series.

**SECTION 2.04. BOND REGISTRAR; REGISTRATION, TRANSFER AND EXCHANGE.** The Town shall cause books for the registration and transfer of Bonds to be kept by the Bond Registrar. Unless otherwise provided in a Series Resolution, all Bonds shall be registered in such books upon presentation thereof to the Bond Registrar, who shall make notation of such registration thereon and shall not be registered to bearer. Bonds shall thereafter be transferred only by the owner of such Bonds, in person or by his duly authorized attorney or legal representative, upon the surrender thereof together with a written assignment duly executed by the owner or his duly authorized attorney or legal representative in such form as shall be satisfactory to the Bond Registrar. The registration of such transfer shall be made on such registration books and endorsed on the Bond by the Bond Registrar. Upon the transfer of any Bond, the Bond Registrar shall cause to be issued in the name of the transferee a new Bond or Bonds.

Upon surrender at the designated corporate trust office of the Bond Registrar with a written instrument of transfer duly executed by the owner or his duly authorized attorney or legal representative, in such form as shall be satisfactory to the Bond Registrar, Bonds may be exchanged in the aggregate principal amount of Bonds of other authorized denominations of the same Series, interest rates and maturity. The Town shall execute, and the Bond Registrar shall authenticate and deliver such Bonds as the owner making the exchange is entitled to receive.

In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Town shall execute and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Resolution. All Bonds surrendered in any such exchanges or transfers shall forthwith be delivered to the Bond Registrar and cancelled by the Bond Registrar in the manner provided in Section 2.05 of this Resolution.

No charge shall be made to any Bondholder for the privilege of registration, transfer or exchange hereinabove granted, but any Bondholder requesting any such registration, transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto. The Town and Bond Registrar shall not be required to execute, transfer or exchange any Bond during the period beginning at the close of business on a Record Date (or Special Record Date) and ending at the close of business on the next Interest Payment Date (or date set for payment

of interest for which the Special Record Date was set). The Town and Bond Registrar shall not be required to transfer or exchange any Bond: (a) during the fifteen days immediately preceding the date of mailing of notice of the redemption of such Bond; or (b) after such Bond has been selected for redemption or has matured.

Each Bond delivered pursuant to any provision of this Resolution in exchange or substitution for, or upon the transfer of the whole or any part of, one or more other Bonds, shall carry all of the right to interest which is accrued and unpaid, and which is to accrue, on the whole or part of the Bonds previously carried, and notwithstanding anything contained in this Resolution, such newly delivered Bond shall be dated or bear such notation so that neither gain nor loss in interest the payment of which is not in default shall result from any exchange, substitution or transfer.

The Town, the Paying Agent and the Bond Registrar may deem and treat the person in whose name any Bond is registered on the books maintained pursuant to this Section 2.04 of this Resolution as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment thereof and for all other purposes whatsoever, and none of the Town, the Paying Agent or the Bond Registrar shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid. Notwithstanding anything to the contrary in this Resolution, the Town may authorize the use of a book entry only system of beneficial ownership with respect to any Series of Bonds.

**SECTION 2.05. CANCELLATION OF BONDS.** All Bonds paid or redeemed, either at or before maturity, shall be delivered to the Paying Agent when such payment or redemption is made, and such Bonds, together with all Bonds purchased by the Town and delivered to the Paying Agent for cancellation, shall thereupon be promptly cancelled. Bonds so cancelled may at any time be destroyed by the Paying Agent, who shall execute a certificate of destruction in duplicate by the signature of one of its authorized officers, describing the Bonds so destroyed, and one executed certificate shall be filed with the Bond Registrar and the other executed certificate shall be kept by the Paying Agent.

**SECTION 2.06. AUTHORIZATION OF SERIES 2003 BONDS.** There is hereby authorized to be issued pursuant to this Section 2.06 and secured by this Resolution one or more Series of Bonds designated as "Town of Davie, Florida Water and Sewer Revenue Refunding Bonds, Series 2003." The Series 2003 Bonds shall be issued in the aggregate principal amount of not exceeding \$31,000,000 for the purpose of providing funds, together with other legally available funds, to pay and defease the Prior Bonds, in the manner hereinafter provided and, as shall be specified in any Series Resolution relating to the Series 2003 Bonds, to make deposits to the Funds and Accounts and pay other costs of issuance and expenses relating thereto. The Series 2003 Bonds shall have a first lien on the Pledged Revenue and the monies on deposit in the Funds and Accounts, on a parity with any Additional Bonds and Refunding Bonds which may hereafter be issued hereunder, as provided herein.

The proceeds (including Capitalized Interest, accrued interest and any premium) of the Series 2003 Bonds shall be applied by an Authorized Officer as follows:

(a) the amount received as Capitalized Interest and accrued interest if any, shall be deposited to the credit of the Debt Service Account pursuant to Section 5.06 of this Resolution;

(b) the amount estimated by an Authorized Officer (which shall not exceed the amount permitted by law) to be sufficient for that purpose shall be deposited to the credit of a special account and applied to the payment of the expenses of issuing the Series 2003 Bonds, including but not limited to, financial advisory, accounting and legal fees, rating agency fees, printing costs, initial Bond Registrar fees, initial Paying Agent fees, initial Trustee fees, Credit Facility or Liquidity Facility fees and expenses, if any, and any other miscellaneous expenses relating to the issuance of the Series 2003 Bonds;

(c) the amount, if any, designated by any Series Resolution relating to the Series 2003 Bonds shall be deposited to the credit of the Reserve Account or any subaccount therein as may be provided in an applicable Series Resolution;

(d) the amount, if any, designated by any Series Resolution relating to the Series 2003 Bonds shall be deposited to the credit of the Renewal and Replacement Fund;

(e) the amount, if any, designated by any Series Resolution relating to the Series 2003 Bonds shall be deposited to the credit of the Rate Stabilization Fund; and

(f) the amounts designated by any Series Resolution relating to the Series 2003 Bonds shall be deposited with the Escrow Agent, in cash, or in the form of Escrow Securities, the principal of and the interest on which when due will enable the Escrow Agent, together with any cash deposited with the Escrow Agent, to pay and redeem the Prior Bonds to be paid and redeemed, together with interest to become due on such Prior Bonds until their respective dates of maturity or redemption and any associated redemption premiums, costs and expenses, all in accordance with the Escrow Deposit Agreement relating to the Prior Bonds. The Escrow Securities so purchased, and any cash so deposited with the Escrow Agent, shall be held in trust, and the principal of and interest on the same shall be applied in accordance with the Escrow Deposit Agreement, as payments on the Prior Bonds are required to be made.

The Series 2003 Bonds shall be initially registered in the name of CEDE & Co., as nominee of DTC, and issued under the book-entry system maintained by DTC. The Town and other necessary parties, if any, including the Bond Registrar, are hereby authorized to enter into the Letter of Representations with DTC in the form customarily used by DTC. Each of the Series 2003 Bonds shall be executed substantially in the form and manner hereinabove set forth, and shall be deposited with an Authorized Officer for delivery but, as a condition precedent thereto, prior to or simultaneously with such delivery there shall be obtained and filed with the Town, the following:

(i) a copy, certified by the Town Clerk, of this Resolution;

(ii) a copy, certified by the Town Clerk, of any Series Resolution relating to the Series 2003 Bonds;

(iii) a written opinion of the Town Attorney and/or bond counsel to the effect that the issuance of the Series 2003 Bonds has been duly authorized, that all conditions precedent to the delivery of such Series 2003 Bonds, including defeasance of the Prior Bonds, have been irrevocably provided for or fulfilled or otherwise satisfied, and that this Resolution creates a valid and enforceable pledge of the Pledged Revenue and a lien for the benefit of the Series 2003 Bonds and the Bondholders thereof on the monies on deposit in the Funds and Accounts and on the Pledged Revenue, prior to any other lien thereon; and

(iv) an executed counterpart of the Escrow Deposit Agreement relating to the Prior Bonds.

When the documents mentioned above in this Section 2.06 shall have been filed with the Authorized Officer and when said Series 2003 Bonds shall have been executed as required by this Resolution, the Bond Registrar shall authenticate, and the Authorized Officer shall deliver, said Series 2003 Bonds to or upon the order of the purchasers named in a Series Resolution, but only upon payment to the Authorized Officer of the purchase price for said Series

2003 Bonds. The Authorized Officer shall be entitled to rely upon any Series Resolution as to all matters stated therein.

SECTION 2.07. ADDITIONAL BONDS. In addition to the Bonds authorized under the provisions of Section 2.06 of this Resolution, Additional Bonds may be issued pursuant to this Section 2.07 and secured by this Resolution from time to time on a parity with the Series 2003 Bonds and any other Additional Bonds or Refunding Bonds theretofore issued under and secured by this Resolution and then outstanding, subject to the conditions hereinafter provided in this Section 2.07, for the purpose of providing funds, together with other legally available funds, to pay all or any part of the Cost of a Project, and, as shall be specified in any Series Resolution relating to the Additional Bonds, to make deposits to the Funds and Accounts and pay other costs of issuance and expenses relating thereto.

The Additional Bonds shall be deposited with an Authorized Officer for delivery, but, as a condition precedent thereto, prior to or simultaneously with such delivery, there shall be obtained and filed with the Town, the following:

(a) A copy, certified by the Town Clerk, of any Series Resolution relating to such Additional Bonds;

(b) A copy, certified by the Town Clerk, of a certificate signed by the Finance Director, stating the amount of Pledged Revenue for the immediately preceding Fiscal Year or for any twelve consecutive months in the eighteen months immediately preceding the date of issuance of the Additional Bonds with respect to which the certificate is made ("Test Period").

(c) A written opinion of the Consulting Engineers or Rate Consultants stating:

(i) that the Pledged Revenue for the Test Period is equal to not less than 110% of the maximum Principal and Interest Requirements in the current or any future Bond Year for all Bonds then Outstanding and the Additional Bonds proposed to be issued; or

(ii) that the Pledged Revenue for the Test Period, adjusted as hereafter provided in this subsection (ii), is equal to not less than 110% of the maximum Principal and Interest Requirements in the current or any future Bond Year for all Bonds then Outstanding and the Additional Bonds proposed to be issued. For purposes of this subsection (ii), Pledged Revenue may be adjusted to reflect the additional Pledged Revenue which, in the opinion of the Consulting Engineers or Rate Consultant, would have been received by the Town from increases in rates, fees, rentals and other charges, including Contribution Charges, for the use of the services furnished by the System if such increases had been implemented and in effect during such Test Period, provided that such increases are adopted and effective as of the date the certification required by this Section 2.07 is made; or

(iii) that the Pledged Revenue for the Test Period, adjusted as hereinafter provided in this subsection (iii) is equal to not less than 110% of the maximum Principal and Interest Requirements in the current or any future Bond Year for all Bonds then Outstanding and the Additional Bonds proposed to be issued. For purposes of this subsection (iii), Pledged Revenue may be adjusted as provided in subparagraph (ii) above and further adjusted to reflect the following: (A) in the

event the Town shall have acquired any privately or publicly owned existing water, sewer or water and sewer system which becomes part of the System the additional Pledged Revenue which, in the opinion of the Consulting Engineers or Rate Consultant, would have been received by the Town from rates, fees, rentals and other charges, including Contribution Charges, for use of the services furnished by the System if such existing system had been operated as part of the System during such Test Period; (B) in the event the Town shall be constructing or acquiring Improvements to the System from such Additional Bonds and shall have established rates, fees and charges to be charged and collected from users of the System when service is rendered, seventy percent (70%) of the additional Pledged Revenue which, in the opinion of the Consulting Engineers or Rate Consultant, is estimated to be derived during the first twelve (12) months of operation after completion of said Improvements from proposed users of the System; and (C) the additional Pledged Revenue which, in the opinion of the Consulting Engineers or Rate Consultant, would have been received by the Town pursuant to written agreements providing for guaranteed revenue or otherwise providing for a minimum amount to be paid to the Town regardless of actual consumption or use, if such written agreements had been in effect during the Test Period, provided that such agreements are adopted and effective as of the date the certification required by this Section 2.07 is made.

(d) A written opinion of the Town Attorney and/or bond counsel to the effect that the issuance of such Additional Bonds has been duly authorized, that all conditions precedent to the delivery of such Additional Bonds have been fulfilled, and that the Resolution and any Series Resolution relating to such Additional Bonds creates a valid and enforceable pledge of the Pledged Revenue and a lien for the benefit of the Bonds and Bondholders thereof on the monies on deposit in the Funds and Accounts and on the Pledged Revenue, prior to any other lien thereon, but on a parity with the Series 2003 Bonds and any Outstanding Additional Bonds and Refunding Bonds;

(e) A certificate of an Authorized Officer stating that provision has been made in an applicable Series Resolution to fund the Reserve Account Requirement as the same will exist following issuance of such Additional Bonds; and

(f) A certificate of the Finance Director to the effect that no event of default as defined in Section 8.02 of this Resolution has occurred and is continuing as of the date of said certificate, which shall be dated within fifteen days prior to the date of issuance of the Additional Bonds.

When the documents mentioned above in this Section 2.07 shall have been filed with the Authorized Officer and when the Additional Bonds described in any Series Resolution relating to the same shall have been executed as required by this Resolution, the Bond Registrar shall authenticate, and the Authorized Officer shall deliver, such Additional Bonds to or upon the order of the purchasers named in a Series Resolution, but only upon payment to the Authorized Officer of the purchase price of such Additional Bonds. The Authorized Officer shall be entitled to rely upon any Series Resolution as to all matters stated therein.

**SECTION 2.08. REFUNDING BONDS.** In addition to the Bonds authorized under the provisions of Section 2.06 and 2.07 of this Resolution, Refunding Bonds may be issued pursuant to this Section 2.08 and secured by this Resolution from time to time on a parity with



the Series 2003 Bonds and any Additional Bonds and Refunding Bonds theretofore issued under and secured by this Resolution and then Outstanding, with the written consent of all the Credit Providers without meeting the condition in (c) below, or otherwise subject to the conditions hereinafter provided in this Section 2.08, for the purpose of providing funds, together with other legally available funds, for refunding all or any portion of the Bonds of any one or more Series issued under the provisions of this Resolution, and/or refunding any Subordinated Obligation and/or refunding any other outstanding bonds or indebtedness of the Town which were not issued under the provisions of this Resolution (hereinafter "Unrelated Debt"), including in each case the payment of all amounts necessary to defease the refunded obligations in accordance with the provisions thereof, and, as shall be specified in any Series Resolution relating to the Refunding Bonds, to make deposits to the Funds and Accounts and pay other costs of issuance and expenses relating thereto.

The Refunding Bonds shall be deposited with an Authorized Officer for delivery, but, as a condition precedent thereto, prior to or simultaneously with such delivery, there shall be obtained and filed with the Town, the following:

(a) A copy, certified by the Town Clerk, of any Series Resolution relating to the Refunding Bonds;

(b) A written opinion of the Town Attorney and/or bond counsel to the effect that the issuance of such Refunding Bonds has been duly authorized, that all conditions precedent to the delivery of such Refunding Bonds, including defeasance of the Bonds to be refunded, have been irrevocably provided for, fulfilled or otherwise satisfied, and that the Resolution and any Series Resolution relating to such Refunding Bonds creates a valid and enforceable pledge of the Pledged Revenue and a lien for the benefit of the Refunding Bonds and Bondholders thereof on the monies on deposit in the Funds and Accounts and on the Pledged Revenue, prior to any other lien thereon, but on a parity with the Series 2003 Bonds and any Outstanding Additional Bonds and Refunding Bonds;

(c) a copy, certified by the Town Clerk, of a certificate signed by an Authorized Officer, confirming any one of the following:

(i) that the maximum Principal and Interest Requirements for all Outstanding Bonds after issuance of the Refunding Bonds (excluding any Bonds being defeased by proceeds of the Refunding Bonds) is not greater than the maximum Principal and Interest Requirements for all Outstanding Bonds prior to issuance of the Refunding Bonds; or

(ii) that the Average Annual Debt Service Requirement for all Outstanding Bonds after issuance of the Refunding Bonds (excluding any Bonds being defeased by proceeds of the Refunding Bonds) is not greater than the Average Annual Debt Service Requirement for all Outstanding Bonds prior to issuance of the Refunding Bonds; or

(iii) that the sum of the present values of the Principal and Interest Requirements for each year for all Outstanding Bonds after issuance of the Refunding Bonds (excluding any Bonds being defeased by proceeds of the Refunding Bonds) is not greater than the sum of the present values of the

Principal and Interest Requirements for each year for all Outstanding Bonds prior to issuance of the Refunding Bonds, using as a discount factor for computation the same yield as the yield on the Bonds being defeased.

(d) a certificate of an Authorized Officer stating that provision has been made in an applicable Series Resolution to fund the Reserve Account Requirement as same will exist following issuance of such Refunding Bonds; and

(e) a certificate of an Authorized Officer to the effect that no Event of Default as defined in Section 9.02 of this Resolution has occurred and is continuing as of the date of said certificate, which shall be dated within fifteen days prior to the date of issuance of the Refunding Bonds.

When the documents mentioned above in this Section 2.08 shall have been filed with the Authorized Officer and when the Refunding Bonds described in any Series Resolution relating to the same shall have been executed as required by this Resolution, the Bond Registrar shall authenticate, and the Authorized Officer shall deliver, such Refunding Bonds to or upon the order of the purchasers named in a Series Resolution, but only upon payment of the purchase price of such Refunding Bonds. The Authorized Officer shall be entitled to rely upon any Series Resolution as to all matters stated therein.

**SECTION 2.09. PREPARATION OF DEFINITIVE BONDS; TEMPORARY BONDS.** The definitive Bonds of each Series shall be typewritten, lithographed or printed with or without steel engraved borders. Until the definitive Bonds of any Series are ready for delivery, there may be executed, and an Authorized Officer may deliver, or cause the Bond Registrar to deliver, in lieu of definitive Bonds and subject to the same limitations and conditions, except as to identifying numbers, temporary printed, engraved, lithographed or typewritten Bonds in the denomination authorized by a Series Resolution or in any multiple thereof substantially of the tenor hereinabove set forth, and with appropriate omissions, insertions and variations as may be required. The Town shall cause the definitive Bonds to be prepared and to be executed, endorsed and delivered to the Bond Registrar, on behalf of the Authorized Officer, and the Bond Registrar, upon presentation to it of any temporary Bond, shall cancel the same and authenticate and deliver, in exchange therefor, at the place designated by the owner, without expense to the owner, a definitive Bond or Bonds of the same Series and in the same aggregate principal amount, maturing on the same date and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged, the temporary Bonds shall in all respects, including the privilege of registration if so provided, be entitled to the same benefit of this Resolution as the definitive Bonds to be issued and authenticated hereunder. The Bond Registrar shall promptly destroy all temporary Bonds that have been cancelled and shall submit a certificate to the Clerk certifying that such temporary Bonds have been cancelled and destroyed.

**SECTION 2.10. MUTILATED, DESTROYED, STOLEN OR LOST BONDS.** In case any Bonds secured hereby shall become mutilated or be destroyed, stolen or lost, the Town may cause to be executed, and the Bond Registrar shall authenticate and deliver, a new Bond of like series, date, maturity, denomination and interest rate in exchange and substitution for and upon the cancellation of, such mutilated Bond or in lieu of and in substitution for such Bond destroyed, stolen, or lost, upon the owner's paying the reasonable expenses and charges of the Town in connection therewith and, in the case of a Bond destroyed, stolen or lost, his filing with the Town and Bond Registrar evidence satisfactory to them that such Bond was destroyed, stolen or lost, and of his ownership thereof, and furnishing the Town and Bond Registrar with

indemnity satisfactory to them. In the event any such Bond shall be about to mature or has matured or been called for redemption, instead of issuing a duplicate Bond, the Town may direct the Paying Agent to pay the same without surrender thereof. Any Bond surrendered for replacement shall be cancelled in the same manner as provided in Section 2.05 hereof.

Any such duplicate Bonds issued pursuant to this Section 2.10 shall constitute additional contractual obligations on the part of the Town, whether or not the lost, stolen or destroyed Bonds are at any time found, and such duplicate Bonds shall be entitled to equal and proportionate benefits rights as to lien on and source and security for payment from the Pledged Revenue and monies on deposit in the Funds and Accounts with all other Bonds issued hereunder.

**SECTION 2.11. PROVISIONS WITH RESPECT TO BOOK-ENTRY SYSTEM.**

The provisions of this Article contained in Sections 2.02 to 2.05 inclusive, may be changed or varied with respect to any Series of Bonds issued under this Article in any Series Resolution or other agreement applicable to such Series of Bonds for other purpose of (1) complying with the requirements of any automated depository and clearinghouse for securities transactions; and (2) effectuating any book-entry only registration and payment system.

Appropriate officers and officials of the Town are hereby authorized to enter into agreements, including the Letter of Representations, with DTC and other depository trust companies, including but not limited to agreements necessary for wire transfers of interest and principal payments with respect to any Series of Bonds, utilization of electronic book entry data received from DTC and other depository trust companies in place of actual delivery of Bonds and provision of notices with respect to Bonds registered by DTC and other depository trust companies (or any of their designees identified to the Town) by overnight delivery, courier service, telegram, telecopy or other similar means of communication.

### **ARTICLE III**

#### **REDEMPTION OF BONDS**

**SECTION 3.01. REDEMPTION GENERALLY.** The Bonds of each Series issued under the provisions of this Resolution shall be subject to redemption, either in whole or in part and at such times and prices, as may be provided in any Series Resolution relating to such Bonds.

If less than all of the Bonds of a Series or of any one maturity of a Series shall be called for redemption, the particular Bonds to be redeemed shall be selected by an Authorized Officer in such manner as the Authorized Officer in his discretion deems fair and appropriate except to the extent otherwise provided in any Series Resolution applicable to such Bonds.

**SECTION 3.02. NOTICE OF REDEMPTION.** Except as otherwise provided in a Series Resolution, at least thirty (30) days, but not more than forty-five (45) days, before the redemption date of any Bonds, an Authorized Officer shall cause a notice of such redemption to be (a) filed with any Paying Agent, (b) sent by registered or certified mail or overnight delivery service to registered securities depositories and to national information services that disseminate redemption notices, and (c) mailed, postage prepaid, to all holders of Bonds to be redeemed in whole or in part at their addresses as they appear on the registration books herein provided for. Failure to file any such notice with any Paying Agent or to mail any such notice to any Bondholder or to any securities depository or national information service or any defect therein shall not affect the validity of the proceedings for redemption, except to the extent a Bondholder is prejudiced thereby, and then, only with respect to such Bondholder. Except as otherwise

provided in a Series Resolution, each such notice shall set forth (i) the date fixed for redemption, (ii) the redemption price to be paid, (iii) the CUSIP numbers and the certificate numbers of the Bonds to be redeemed, (iv) the name and address of the Paying Agent for the Bonds, (v) the dated date, interest rate and maturity date of the Bonds, (vi) if less than all of the Bonds of a Series then outstanding shall be called for redemption, the amounts of each of the Bonds to be redeemed and (vii) the name, address and telephone number of the person or entity to be responsible for such redemption.

**SECTION 3.03. EFFECT OF CALLING FOR REDEMPTION.** On the date so designated for redemption, notice having been given in the manner and under the conditions hereinabove provided, and, monies for payment of the redemption price being held in separate accounts by an Authorized Officer or the Paying Agent in trust for the holders of the Bonds to be redeemed, all as provided pursuant to this Resolution, the Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds on such date, interest on the Bonds so called for redemption shall cease to accrue, such Bonds shall not be deemed to be Outstanding under this Resolution and shall cease to be entitled to any lien, benefit or security under this Resolution, and the holders of such Bonds shall have no rights in respect thereof, except to receive payment of the redemption price thereof, including accrued interest to the date of redemption.

**SECTION 3.04. REDEMPTION OF PORTIONS OF BONDS.** Any Bond which is to be redeemed only in part shall be surrendered at any place of payment specified in the notice of redemption (with due endorsement by, or written instrument of transfer in form satisfactory to, the Bond Registrar, duly executed by the owner thereof or his duly authorized attorney or legal representative in writing) and the Town shall execute and the Bond Registrar shall authenticate and deliver to the owner of such Bond, without charge, other than any applicable tax or other governmental charge, a new Bond or Bonds, of any authorized denomination, as requested by such owner in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bonds so surrendered.

**SECTION 3.05. BONDS CALLED FOR REDEMPTION OR PAYMENT PROVIDED THEREFOR NOT OUTSTANDING.** Bonds which have been duly called for redemption under the provisions of this Article, or with respect to which "irrevocable instructions to redeem or pay" have been made, as hereinafter provided, shall not be deemed to be outstanding under this Resolution and shall cease to be entitled to any lien, benefit or security under this Resolution. Irrevocable instructions to redeem or pay shall have been made if (a) the Town has directed the Escrow Agent or the Paying Agent for the Bonds to (i) call the Bonds for redemption pursuant to this Article; or (ii) pay the Bonds at their respective maturities and mandatory redemption dates; or (iii) any combination of such redemption and payment, and (b) "Sufficient Monies and/or Sufficient Escrow Securities" shall be held in separate accounts by such Escrow Agent or Paying Agent in trust for the holders of the Bonds to be redeemed and paid, all as provided in this Resolution. Sufficient Monies and/or Sufficient Escrow Securities shall mean cash, and Escrow Securities in such amounts, bearing interest at such rates and maturing on such dates that the proceeds thereof, and the interest thereon, will provide sufficient monies for the payment of the redemption price and maturing principal amounts of the Bonds and the interest to accrue thereon to the date fixed for redemption or the dates of their respective maturities and mandatory redemption dates.

SECTION 3.06. EXPENSES OF REDEMPTION. The expenses of any redemption of Bonds pursuant to this Article shall be paid by the Town from the Revenue Fund.

## **ARTICLE IV**

### **CONSTRUCTION FUND**

**SECTION 4.01. CONSTRUCTION FUND.** A special fund is hereby created and designated "Town of Davie, Florida Water and Sewer System Construction Fund" (herein sometimes called the "Construction Fund") which shall be held by the Town and to the credit of which there shall be deposited the amounts described in Section 2.07 of this Resolution. At the option of the Town, there may also be deposited for the credit of the Construction Fund, for such purposes as described in a resolution of the Town authorizing such deposit, any monies received by the Town from any source, unless such monies are required by this Resolution to be otherwise applied.

The monies in the Construction Fund derived from the proceeds of Bonds shall be held in trust and applied to the payment of the Cost of a Project in accordance with this Article IV and Section 2.07 of this Resolution and any Series Resolution relating to such Bonds or to payment of such other Improvements or for such other purpose as specified in the resolution authorizing the deposit. Pending such application, such monies shall be subject to a lien and charge in favor of the holders of the Outstanding Bonds in the manner provided herein until paid out as herein provided.

If the Town shall issue Additional Bonds pursuant to Section 2.07 of this Resolution, the Town shall create and designate a special account within the Construction Fund to which shall be deposited an amount of proceeds of such Additional Bonds as is specified by any Series Resolution relating thereto. Additional special accounts may be created by the Town for deposit of funds, if any, from the Prior Bonds or other sources, as provided in the resolution directing such deposit.

**SECTION 4.02. PAYMENTS FROM CONSTRUCTION FUND.** Payment of the Cost of a Project shall be made from the Construction Fund as herein provided. All such payments shall be subject to the provisions and restrictions set forth in this Article and the Town covenants that it will not cause or permit to be paid from the Construction Fund any sums except in accordance with such provisions and restrictions. Monies in the Construction Fund shall be disbursed subject to such controls and procedures as the Town may from time to time institute in connection with the disbursement of Town funds for paying the cost of capital projects.

**SECTION 4.03. COST OF A PROJECT.** For the purposes of this Article IV, the Cost of a Project shall include, without intending to limit or to restrict any proper definition of Cost under the provisions of this Resolution or the Act, the following:

(a) obligations incurred for labor, materials, machinery and equipment in connection with the construction of enlargements, improvements, modifications and extensions, and for the restoration or relocation of property damaged or destroyed in connection with same and for the demolition and disposal of structures and all other obligations incurred to contractors, suppliers, materialmen, and laborers that are necessary or desirable in connection with a Project;

(b) interest accruing upon the Bonds prior to the commencement of and during construction or for any additional period if so provided, subject to any limitation in any Series Resolution relating to such Bonds;

(c) the cost of acquiring by purchase, if such purchase shall be deemed expedient, and the amount of any award or final judgment in, or any settlement or compromise of, any proceeding to acquire by condemnation, such property, lands, rights of way, franchises, easements and other interests in lands constituting a part of, or as may be deemed necessary or convenient for the acquisition or construction of, a Project; the cost of options and partial payments thereon, the cost of filling, draining, or improving any lands so acquired, and the amount of any damages incident to or consequent upon the acquisition or construction of a Project;

(d) expenses of administration properly chargeable to a Project, including legal expenses of consultants, financing charges, Trustee fees, bond counsel fees and expenses, the cost of preparing and issuing Bonds, the cost and charges of Credit Facilities and Liquidity Facilities, taxes or other municipal or governmental charges lawfully levied or assessed during construction upon a Project or any property acquired therefor, and premiums on insurance (if any) in connection with a Project during construction;

(e) fees and expenses of architects, engineers, surveyors, construction supervisors and similar professionals for making studies, surveys and estimates of cost and of revenue and for preparing plans and supervising construction, as well as for the performance of all other duties set forth herein in relation to the construction of the Project or the issuance of Bonds therefor;

(f) all items embraced within the term "cost", as defined in the Act, and other items of expense not elsewhere in this Section specified, incident to the acquisition or construction and equipment of a Project and the placing of any improvements in operation and to the acquisition of real estate, franchises and rights-of-way therefor, including abstracts of title and title insurance;

(g) any amounts hereafter advanced by any agency of the state or federal government for any of the foregoing purposes and any obligation or expenses heretofore or hereafter incurred by the Town for any of the foregoing purposes, including the cost of materials, supplies or equipment furnished by the Town in connection with the construction of a Project and paid for by the Town out of funds other than monies in the Construction Fund, and further including any bond anticipation notes issued by the Town in the future to pay all or any part of the cost of a Project together with interest on any such bond anticipation notes; and

(h) the cost of any other Improvements to a Project as may be approved by subsequent Series Resolution.

With respect to any Series of Bonds, the Cost of a Project shall not include any cost paid prior to issuance of such Bonds unless payment of such cost would be treated as an expenditure for purposes of sections 141-150 of the Code or unless otherwise provided in a related Series Resolution.

**SECTION 4.04. MODIFICATIONS AND AMENDMENTS TO PROJECT.** The Town may, in its sole discretion, modify or amend any Project to include such Improvements as it deems appropriate.

**SECTION 4.05. DISPOSITION OF CONSTRUCTION FUND BALANCE.** When the construction of any Project shall have been completed, which fact shall be evidenced to the Finance Director by a certificate stating the date of such completion, signed and approved by the Consulting Engineers, the balance in the Construction Fund relating to that Project not reserved for the payment of any remaining part of the Cost of such Project, or not otherwise required to be applied in any specified manner by any Series Resolution relating to Bonds issued to finance that Project, shall be transferred, at the discretion of the Town, to the credit of the Renewal and Replacement Fund, the Sinking Fund (for the payment of principal of the Bonds), to the credit of the Redemption Fund (for the purchase of Bonds) or to the Surplus Fund (such transfer to the Renewal and Replacement Fund or Surplus Fund being subject to the Town having first obtained an opinion of counsel with expertise in the field of tax-exempt municipal finance to the effect that such transfer shall not cause interest on any Bonds to be subject to federal income taxation) or retained in the Construction Fund to pay the Cost of a different Project.

## **ARTICLE V**

### **REVENUE AND FUNDS**

**SECTION 5.01. PLEDGE OF PLEDGED REVENUE.** The Town hereby pledges and imposes a first lien upon the Pledged Revenue and any and all other monies on deposit in the Funds and Accounts, including, without limitation, the investment earnings thereon, to secure the payment of the principal of, redemption premium, if any, and interest on the Bonds and the performance by the Town of its other obligations under this Resolution.

**SECTION 5.02. RATE COVENANTS.** The Town covenants:

(a) that it will continue in effect the present rates, fees and other charges, including Contribution Charges, for the use of the System and the services furnished by the System until the same shall be revised as hereinafter provided,

(b) that it will not change, revise or reduce any such rates, fees, rentals and other charges if, in the opinion of the Consulting Engineers or Rate Consultant, such change, revision or reduction will result in producing less Pledged Revenue unless, in the opinion of the Consulting Engineers or Rate Consultant, such rates, fees, rentals and other charges as so changed, revised or reduced will produce sufficient Net Pledged to comply with subsection (c) of this Section, and

(c) that, subject to the foregoing provisions of this Section 5.02, from time to time and as often as it shall appear necessary it will request the Consulting Engineers or Rate Consultant to make recommendations as to a revision of the rates, fees, and other charges, including Contribution Charges, for the use of the System and for the services furnished by the System and will file a copy of such request with the Finance Director, and upon receiving such recommendations it will make such revisions as may be necessary or proper in order that Pledged Revenue will at all times be sufficient in each Fiscal Year to provide an amount at least equal to the sum of 110% of the Principal and Interest Requirements for the current Fiscal Year and 100% of the Reserve Account Deposit Requirement for the current Fiscal Year.



The deposit to the credit of the Sinking Fund and Redemption Fund in any Fiscal Year of an amount in excess of the amounts required under this Resolution for such Fiscal Year shall be taken into account in adjusting the rates, fees, rentals and other charges for any subsequent Fiscal Years. Any deficiency in the amounts deposited to the credit of the Sinking Fund, Redemption Fund or the Renewal and Replacement Fund in any Fiscal Year shall, as promptly as may be practicable, be added to the amounts referred to above for the remaining Fiscal Years in adjusting such rates, fees, rentals and other charges, the amount so to be added in each of such subsequent Fiscal Years to be approved by the Consulting Engineers or Rate Consultant.

The Town covenants that if at any time the total amount of Pledged Revenue realized in any Fiscal Year shall be less than the amounts referred to above for such Fiscal Year, it will, before the 45th day of the following Fiscal Year, request the Consulting Engineers or Rate Consultant to make their recommendations as to a revision of the rates, fees, rentals and other charges, including Contribution Charges, and any changes in methods of operation. The copies of such request and of the recommendations of the consulting Engineers or Rate Consultant shall be filed with the Finance Director.

Anything in this Resolution to the contrary notwithstanding, if the Town shall comply with all recommendations of the Consulting Engineers or Rate Consultant in respect of rates, fees, rentals and other charges, the failure to meet the requirements of clause (c) above in any Fiscal Year will not constitute an event of default under the provisions of Section 8.02(h) of this Resolution if Pledged Revenue is sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds payable in such Fiscal Year is paid when due.

Notwithstanding any of the foregoing provisions of this Section 5.02, agreements and contracts for the use of the System or any services of the System in effect on the date of the enactment of this Resolution shall not be subject to revisions except in accordance with their terms, and the Town may enter into new agreements or contracts for the use of the System on such terms and for such periods of time as it shall determine to be proper.

This rate covenant shall not be applicable to any principal and interest requirement attributable to any notes issued in anticipation of Bonds to be issued under this Resolution unless such notes are issued as Additional Bonds hereunder.

**SECTION 5.03. ANNUAL BUDGET.** The Town covenants that on or before the first day of each Fiscal Year it will adopt a budget for such Fiscal Year. Copies of the Annual Budget shall be filed with the Finance Director.

If for any reason the Town shall not have adopted the Annual Budget before the first day of any Fiscal Year, the Annual Budget for the preceding Fiscal Year shall, until the adoption of the Annual Budget, be deemed to be in force and shall be treated as the Annual Budget under the provisions of this Article.

The Town may at any time adopt an amended or supplemental Annual Budget for the remainder of the then current Fiscal Year, and the Annual Budget so amended or supplemented shall be treated as the Annual Budget under the provisions of this Article. Copies of any such amended or supplemental Annual Budget shall be filed with the Finance Director.

The Town further covenants that the amount expended for Operating Expenses in any Fiscal Year will not exceed the reasonable and necessary amount thereof, except that in the event of an emergency such amounts may be expended in excess of the Annual Budget as are subsequently ratified by the Town. Nothing contained herein shall limit the amount which the Town may expend for Operating Expenses in any Fiscal Year provided any amounts expended therefor in excess of the total amount provided in the Annual Budget shall be received by the Town from a source other than Gross Revenue in such Fiscal Year.

**SECTION 5.04. PROVISIONS APPLICABLE SUBSEQUENT TO DEFEASANCE OF PRIOR ORDINANCE.** Upon defeasance of the Prior Bonds by means of the Series 2003 Bonds, monies in the funds and accounts established under the Prior Resolution shall be applied as provided in one or more Series Resolutions relating to the Series 2003 Bonds.

**SECTION 5.05. GROSS REVENUE FUND.** A special Fund is hereby created and designated the "Town of Davie, Florida Water and Sewer System Gross Revenue Fund" (herein called the "Gross Revenue Fund"). The Town covenants that, after defeasance of the Prior Resolution, except as herein provided, all Gross Revenue collected by the Town will be deposited when initially received to the credit of the Gross Revenue Fund.

SECTION 5.06. SINKING AND OTHER FUNDS. A special Fund is hereby created and designated "Town of Davie, Florida Water and Sewer System Sinking Fund" (herein called the "Sinking Fund"). There are hereby created in the Sinking Fund two separate Accounts designated the "Debt Service Account" and "Reserve Account," respectively. Six additional special Funds are hereby created and designated the "Town of Davie, Florida Water and Sewer System Operation and Maintenance Fund" (herein called the "Operation and Maintenance Fund"), the "Town of Davie, Florida Water and Sewer System Renewal and Replacement Fund" (herein called the "Renewal and Replacement Fund"), the "Town of Davie, Florida Water and Sewer System Redemption Fund" (herein called the "Redemption Fund"), the "Town of Davie, Florida Water and Sewer System Surplus Fund" (herein called the "Surplus Fund"), the "Town of Davie, Florida Water and Sewer System Contribution Charges Fund" (herein called the "Contribution Charges Fund") and the "Town of Davie, Florida Water and Sewer System Rate Stabilization Fund" (herein called the "Rate Stabilization Fund"). An additional non-pledged fund is hereby created and designated the "Town of Davie, Florida Water and Sewer System Rebate Fund" (herein called the "Rebate Fund").

If required by the terms of any Series Resolution, the Town shall create and designate a separate sinking fund in connection with such Series of Bonds or provide within the Accounts in the Sinking Fund separate subaccounts in connection therewith and shall further provide for the funding thereof in the manner specified in such Series Resolution.

The monies in the Funds and Accounts (which excludes the monies in the Rebate Fund) shall be held in trust and applied as hereinafter provided with regard to each such Fund and Account and, pending such application, shall be subject to a lien and charge in favor of the Bondholders until paid out or transferred as herein provided.

SECTION 5.07. FLOW OF FUNDS. An Authorized Officer shall transfer monies from the Gross Revenue Fund to the Rebate Fund at the times and in the amounts required to be transferred in order to comply with the rebate covenants set forth in Section 7.17 hereof.

Thereafter, an Authorized Officer, not later than the 25th day of the month next succeeding the month in which Bonds are issued under the provisions of this Resolution and in each month thereafter, withdraw and transfer an amount from the Gross Revenue Fund to the Operation and Maintenance Fund so that thereafter the amount on deposit in the Operation and Maintenance Fund equals the amount necessary for Operating Expenses during the next two months; provided, however, that such transfer shall not be required to be made to the extent that sufficient money is on deposit in the Operation and Maintenance Fund.

An Authorized Officer shall, no later than the 25th day of each month that Bonds are outstanding, commencing on the month after Bonds are first issued hereunder, withdraw and transfer from the Gross Revenue Fund amounts sufficient to make deposits to the credit of the Funds or Accounts described below, in the following order of priority:

(a) Concurrently to (i), (ii) and (iii) without distinction, priority or preference of one Account over any other Account, such Accounts being on a parity with each other:

(i) to the credit of the Debt Service Account, such sums as shall be required to pay one-sixth of the interest which will become due on the next semi-annual Interest Payment Date on all Bonds then outstanding (except as to Capital Appreciation Bonds and Capital Appreciation and Income Bonds prior to their applicable Interest Commencement Date); provided, however that such monthly deposits for interest shall not be required to be made to the extent that money on deposit therein is sufficient for such purpose;

(ii) to the credit of the Debt Service Account, such sums as shall be required to pay one-twelfth of the amount of principal which will become payable on the next principal payment date on all Serial Bonds then outstanding (including the

Accreted Value and Appreciated Value of any Serial Capital Appreciation Bonds and Capital Appreciation and Income Bonds, respectively, coming due on such maturity dates); provided, however, that such monthly deposits for principal shall not be required to be made to the extent that money on deposit therein is sufficient for such purpose;

(iii) to the credit of the Redemption Fund, an amount equal to one-twelfth of the principal amount of Term Bonds then outstanding required to be retired in satisfaction of the Amortization Requirements, if any, for such Bond Year (including the Accreted Value and Appreciated Value of any Term Capital Appreciation Bonds and Capital Appreciation and Income Bonds, respectively, which are required to be redeemed during such Bond Year); provided, however, that such monthly deposits for satisfaction of the Amortization Requirements shall not be required to be made to the extent that money on deposit therein is sufficient for that purpose.

In the event that, with respect to the Bonds, the periods to elapse between Interest Payment Dates for the purposes of subsection (i) above or between the date of delivery of the Bonds and the next principal payment date for the purposes of subsection (ii) above will be other than six months or twelve months, respectively, then such monthly payments shall be increased or decreased accordingly, in sufficient amounts to provide, as to such Series, the required interest or principal amount maturing on the next Interest Payment Date or principal payment date, as applicable.

In the event the Town has issued Variable Rate Bonds or entered into any Interest Rate Swaps pursuant to the provisions of this Resolution, amounts shall be deposited in the Debt Service Account at such other times and/or in such other amounts or transferred to such other parties as necessary to pay the interest becoming due on the Variable Rate Bonds or the payment due under the Interest Rate Swaps on a parity with interest due on the Bonds, all in the manner provided in the applicable Series Resolution.

(b) To the credit of the Reserve Account, such amount, if any, of any balance remaining after making the transfers under clause (a) above as may be required to make the amount transferred in such month to the credit of the Reserve Account equal to the Reserve Account Deposit Requirement for such month for the Bonds then Outstanding; provided, however, that no such transfer shall be required in any month if the amount then to the credit of the Reserve Account shall not be less than an amount equal to the Reserve Account Requirement applicable to the Outstanding Bonds.

(c) To the credit of the Renewal and Replacement Fund, such amount, if any, of any balance remaining after making the transfers under clauses (a) and (b) above as may be required to make the amount transferred under the provisions of this Section 5.07 in the then current Fiscal Year to the credit of the Renewal and Replacement Fund equal to the amount, if any, as the Town shall, in its discretion, determine in one or more Series Resolutions as such amount may, from time to time, be modified by recommendations of the Consulting Engineers or Rate Consultant under the provisions of Section 5.10 of this Resolution.

(d) To the credit of the Rate Stabilization Fund such amount, if any, of the balance remaining after making the transfers under clauses (a), (b) and (c) above (or the entire balance if less than the required amount) as shall be determined from time to time by the Town Council for crediting thereto.

(e) The balance, if any, remaining in the Gross Revenue Fund after making the deposits under clauses (a), (b), (c) and (d) above shall be deposited to the credit of the Surplus Fund and expended as permitted by Section 5.13 of this Resolution.

In the case of Variable Rate Bonds, the calculation of deposits for the funding of interest payable on the next Interest Payment Date shall be made as provided in the applicable Series Resolution for said Variable Rate Bonds.

The Town retains the right to prepay amounts which would become due in any Bond Year. If the amount transferred in any month to the credit of any of the Funds or Accounts shall be less than the amount required to be transferred under the foregoing provisions of this Section 5.07, the requirement therefor shall nevertheless be cumulative and the amount of any deficiency in any month shall be added to the amount otherwise required to be transferred in each month thereafter until such time as all such deficiencies have been made up.

Notwithstanding the foregoing provisions, in lieu of the required deposits into the Reserve Account, the Town may cause to be deposited a Reserve Account Credit Facility in an amount equal to the difference between the Reserve Account Requirement applicable thereto and the sums then on deposit in the Reserve Account, if any. Such Reserve Account Credit Facility shall be payable to the Paying Agent for such Series (upon the giving of notice as required thereunder) on any Interest Payment Date or redemption date on which a deficiency exists which cannot be cured by funds in any other Fund or Account available for such purpose. The issuer providing such Reserve Account Credit Facility shall be either (a) an insurer whose municipal bond insurance policies insuring the payment, when due, of the principal of and interest on municipal bond issues results in such issues being rated in the highest rating category (without regard to numerical or other modifiers) by Standard & Poor's Corporation and Moody's Investors Service, or their successors, or (b) a commercial bank, insurance company or other financial institution the bonds payable or guaranteed by which have been, or whose obligation to pay is guaranteed by, a commercial bank, insurance company or other financial institution which has been, assigned ratings by Standard & Poor's Corporation and Moody's Investors Service, or their successors, in one of the two highest rating categories (without regard to numerical or other modifiers).

#### SECTION 5.08. APPLICATION OF MONIES IN DEBT SERVICE ACCOUNT.

Except as otherwise provided in a Series Resolution with respect to a Series of Bonds, an Authorized Officer shall, prior to each Interest Payment Date, withdraw from the Debt Service Account, and (a) remit by mail or cause the Paying Agent to remit by mail to each owner of Bonds the amounts required for paying the interest on such Bonds as such interest becomes due and payable and (b) deposit in trust with the Paying Agent the amounts required for paying the principal of all Bonds as such principal becomes due and payable.

SECTION 5.09. APPLICATION OF MONIES IN RESERVE ACCOUNT. Monies held for the credit of the Reserve Account shall be used for the purpose of paying the interest on and the principal and Amortization Requirements of the Bonds whenever and to the extent that the monies held for the credit of the Debt Service Account and Redemption Fund (after any transfers thereto from the Rate Stabilization Fund as provided in Section 5.12 hereof) shall be insufficient for such purpose and there are no monies held for credit of the Surplus Fund that are available for transfer to the Debt Service Account and Redemption Fund for that purpose.

If at any time the monies held for the credit of the Reserve Account shall exceed the Reserve Account Requirement, such excess shall, upon written notice from the Authorized Officer, be withdrawn by an Authorized Officer and deposited to the credit of the Gross Revenue Fund.

In the event the Town establishes separate subaccounts in the Reserve Account pursuant to Section 2.01 hereof for each Series of Bonds outstanding or provides for a Reserve Account Credit Facility in lieu of the required deposits to the Reserve Account as provided in Section 5.06, then in every such case, withdrawals from the Reserve Account shall be from the subaccount established for the respective Bonds for which the withdrawal is required, or if no priority is specified between Bonds, then on a pro rata basis; provided that all money in the applicable subaccount shall be depleted prior to drawing on a Reserve Account Credit Facility relating to that subaccount.

Whenever a withdrawal therefrom results in a deficiency in the Reserve Account, or a deficiency in the Reserve Account is determined to exist upon valuation of same pursuant to Section 6.02 hereof, the Town may make up such

deficiency by making twelve successive monthly cash payments to the credit of the Reserve Account, each equal to one-twelfth of such deficiency, commencing in the month following the event that caused the deficiency.

Whenever monies on deposit in the Reserve Account, together with the other available amounts in the Sinking Fund, are sufficient to fully pay in accordance with their terms, all Outstanding Bonds (including principal, premium, if any, and interest thereon), the funds on deposit in the Reserve Account shall be applied to the payment of Bonds as and when same become due and fully payable, at their maturities or the earlier redemption thereof.

If fifteen days prior to an Interest Payment Date or principal payment date, an Authorized Officer shall determine that a deficiency exists in the amount of monies available to pay in accordance with the terms hereof interest and/or principal due on Bonds on such date, an Authorized Officer shall immediately notify the issuer of the applicable Reserve Account Credit Facility, and the Credit Provider, if any, of the amount of such deficiency and the date on which such payment is due, and shall take all action to cause such issuer or Credit Provider to provide monies sufficient to pay all amounts due on such Interest Payment Date or principal payment date.

If a disbursement is made from a Reserve Account Credit Facility, the Town shall cause the maximum limits of such Reserve Account Credit Facility to be reinstated as soon as it is able following such disbursement, from monies available hereunder, and prior to funding any cash requirement of the Reserve Account (other than subaccounts therein having priority over the subaccount relating to the Reserve Account Credit Facility) by depositing funds in the amount of the disbursement made under such instrument, with the issuer thereof, together with interest thereon to the date of reimbursement at the rate set forth in such Reserve Account Credit Facility, but in no case greater than the maximum rate of interest permitted by law. In addition, the Town shall reimburse the issuer of the Reserve Account Credit Facility for all reasonable expenses incurred by such issuer and required to be reimbursed by the terms of the Reserve Account Credit Facility.

The Town may evidence its obligation to reimburse the issuer of any Reserve Account Credit Facility by executing and delivering to such issuer a promissory note therefor, provided, however, that any such note shall not be a general obligation of the Town the payment of which is secured by its full faith and credit or taxing power, and shall be payable solely from the Pledged Revenue in the manner provided herein.

If any Reserve Account Credit Facility shall terminate prior to the stated expiration date thereof, the Town agrees that it shall fund the Reserve Account over a period not to exceed sixty months during which it shall make consecutive equal monthly payments for the credit of the Reserve Account (or applicable subaccount therein) in order that the amount on deposit in such account at the end of such period shall be equal to the Reserve Account Requirement; provided the Town may, with the prior written consent of the Credit Provider, if any, obtain a new Reserve Account Credit Facility in lieu of making the payments required by this paragraph.

**SECTION 5.10. APPLICATION OF MONIES IN RENEWAL AND REPLACEMENT FUND.** Money held for the credit of the Renewal and Replacement Fund shall be disbursed only for the purpose of paying the cost of unusual or extraordinary maintenance or repairs to the System, the cost of renewals and replacements to the System and the cost of acquiring, installing or replacing equipment of the System and engineering, legal and administrative expenses relating to the foregoing and the cost of providing a local share of monies required to entitle the Town to receive federal or state grants or participate in federal or state assistance programs related to the System; provided, however, money in the Renewal and Replacement Fund, unless needed for the purposes set forth in the following paragraph, may be used in the event of an emergency occurrence certified as such by the Consulting Engineers or Rate Consultant, if there is insufficient money in the Surplus Fund and Gross Revenue Fund to rectify said emergency. Payments from the Renewal and Replacement Fund, except the withdrawal which an Authorized Officer is authorized to make as hereinafter provided in this Section, shall be made in accordance with the provisions of Section 4.02 of this Resolution for payments from the Construction Fund to the extent that such provisions may be applicable.

If at any time the monies held for the credit of the Debt Service Account, Redemption Fund, Surplus Fund, Rate Stabilization Fund and Reserve Account shall be insufficient for the purpose of paying the interest on and the principal and Amortization Requirements of the Bonds as such interest and principal and Amortization Requirements become due and payable, then an Authorized Officer shall withdraw from any monies held for the credit of the Renewal and Replacement Fund and deposit to the credit of the Debt Service Account and Redemption Fund an amount sufficient to make up any such deficiency. Any monies so withdrawn from the Renewal and

Replacement Fund and deposited to the credit of the Debt Service Account or the Redemption Fund shall be restored from available monies in the Gross Revenue Fund, subject to the same conditions as are prescribed for deposits to the credit of the Renewal and Replacement Fund under the provisions of Section 5.07(c) of this Resolution. The Consulting Engineers or Rate Consultant may, from time to time, recommend to the Town that it increase or decrease the minimum amount to be maintained on deposit in the Renewal and Replacement Fund. The Town may, in the event of a recommended decrease, transfer any excess from the Renewal and Replacement Fund to the Gross Revenue Fund for application as provided herein. If the recommendation is to increase the minimum amount required to be maintained on deposit in the Renewal and Replacement Fund, the same shall be accomplished according to a schedule of monthly deposits to be made to the Renewal and Replacement Fund recommended by the Consulting Engineers.

**SECTION 5.11. APPLICATION OF MONIES IN THE REDEMPTION FUND.**  
Money held for the credit of the Redemption Fund shall be applied by an Authorized Officer to the retirement of Bonds as follows:

(a) Subject to paragraph (c) of this Section 5.11, an Authorized Officer may endeavor to purchase any Bonds secured hereby and then outstanding, whether or not such Bonds shall then be subject to redemption, on the most advantageous terms obtainable with reasonable diligence, such price not to exceed the principal of such Bonds plus the amount of the redemption premium, if any, which might on the next redemption date be paid to the holders of such Bonds under the provisions of Article III of this Resolution if such Bonds should be called for redemption on such date from monies in the Sinking Fund. The Authorized Officer shall pay the interest accrued on such Bonds to the date of settlement therefor from the Debt Service Account and the purchase price from the Redemption Fund, provided that said Authorized Officer determines that such transfer will not impair the Town's ability to fully fund the Funds and Accounts as provided in Section 5.02 hereof.

(b) Subject to paragraph (c) of this Section 5.11 and Article III of this Resolution, an Authorized Officer may call for redemption on each Interest Payment Date on which Bonds are subject to redemption, such amount of such Bonds as, with the redemption premium, if any, will exhaust the monies which will be held for the credit of the Redemption Fund on said Interest Payment Date as nearly as may be; provided, however, that no less than Fifty Thousand Dollars principal amount of Bonds or such other principal amount as may be provided in a Series Resolution relating to the Bonds shall be called for redemption at any one time unless a lesser amount shall be required to satisfy the Amortization Requirement for any Fiscal Year. Such redemption shall be made pursuant to the provisions of Article III of this Resolution. The Authorized Officer shall prior to the redemption date withdraw from the Debt Service Account and the Redemption Fund and set aside in separate accounts or deposit with the Paying Agent the respective amounts required for paying the interest on, and the principal and redemption premium of, the Bonds so called for redemption.

(c) Monies held in the Redemption Fund shall be applied by an Authorized Officer in each Bond Year to the retirement of the Term Bonds of each Series to the extent of the Amortization Requirement, if any, for such Bond Year for Term Bonds and any deficiency in any preceding Bond Years in the redemption of such Term Bonds under the provisions of this subdivision and, if the amount available in such Bond Year shall not be sufficient therefor, then in proportion to the Amortization Requirement, if any, for such Bond Year and any such deficiency.

The expenses in connection with the purchase or redemption of any such Bonds shall be paid by the Town from the Gross Revenue Fund.

SECTION 5.12. APPLICATION OF MONEYS IN RATE STABILIZATION FUND. Moneys held for the credit of the Rate Stabilization Fund shall be disbursed, upon the written direction of the Finance Director, for transfer to the Gross Revenue Fund, at such times and in such amounts as the Finance Director shall determine, and may be used to pay Current Expenses and for the following additional purposes. If any time the moneys held for the credit of the Debt Service Account and Reserve Account shall be insufficient for the purpose of paying the interest on and the principal and Amortization Requirements of the Bonds as such interest, principal and Amortization Requirements become due and payable, then an Authorized Officer shall withdraw from any moneys held for the credit of the Rate Stabilization Fund and deposit to the credit of the Debt Service Account an amount sufficient to make up any such deficiency.

If at any time the Pledged Revenue and the moneys held for the credit of the Reserve Account shall be insufficient for making the deposits to the credit of the Redemption Fund required by clause (a)(iii) of Section 5.07 of this Resolution, then an Authorized Officer shall withdraw from any moneys held for the credit of the Rate Stabilization Fund and deposit to the credit of the Redemption Fund an amount sufficient to make up any such deficiency; provided, however, that no such transfer shall be made unless the moneys then held for the credit of Debt Service Account are at least equal to the maximum requirement therefor under clauses (a)(i) and (a)(ii) of said Section 5.07.

SECTION 5.13. APPLICATION OF MONIES IN THE SURPLUS FUND. Money held for the credit of the Surplus Fund may be applied by the Town in the following order of priority:

- (a) to make up deficiencies in any of the Funds and Accounts created by this Resolution; and
- (b) to pay the principal of, redemption premium, if any, or Amortization Requirements, and the interest on, any Subordinated Obligation.

Subject to prior application as provided above, any monies in the Surplus Fund may be applied by the Town to:

- (i) pay the Cost of a Project;
- (ii) purchase or redeem Bonds or any notes issued in anticipation of the Bonds;
- (iii) pay the Cost of any item qualifying as an authorized expenditure from the Renewal and Replacement Fund; or
- (iv) for any other lawful purpose of the Town expressly related to the System.

Notwithstanding the foregoing, in the event of any deficiencies in any Funds or Accounts or Rebate Fund created by this Resolution, the money in the Surplus Fund shall be applied to make up all such deficiencies prior to applying any money in the Reserve Account, Renewal and Replacement Fund, Rate Stabilization Fund or Contribution Charges Fund for such purpose.

SECTION 5.14. CONTRIBUTION CHARGES FUND. The Town shall deposit into the Contribution Charges Fund on a monthly basis all proceeds of Contribution Charges

received during such month. Such proceeds shall be accumulated in the Contribution Charges Fund and applied by the Town, to the extent permitted by law, in the following manner and order of priority: (a) to pay the principal of, redemption premium, if any, Amortization Requirements and interest on Bonds issued hereunder to finance the Cost of Improvements in connection with which the Contribution Charges were imposed by the Town; then (b) to pay the Cost of Improvements in connection with which the Contribution Charges were imposed by the Town; and then (c) to be used for any other lawful purpose relating to the System in connection with which the Contribution Charges were imposed by the Town; provided, however, that in the event of any deficiencies in any Funds or Accounts created by this Resolution, the money in the Contribution Charges Fund shall be applied to make up all such deficiencies prior to applying any money in the Reserve Account, Rate Stabilization Fund or Renewal and Replacement Fund for such purpose or applying money in the Contribution Charges Fund for any other purpose. In the event such monies are to be used in accordance with (a) above, an Authorized Officer shall, on the 25th day of the month, deposit such monies in the Debt Service Account or Redemption Fund or any combination thereof, to be applied to pay interest on and principal and Amortization Requirements of the Bonds.

**SECTION 5.15. MONIES HELD IN TRUST.** All monies which the Town shall have withdrawn from the Sinking Fund or that the Town shall have received from any other source and deposited with the Paying Agent, for the purpose of paying any of the Bonds hereby secured, either at the maturity thereof or upon call for redemption, shall be held in trust for the respective owners of such Bonds. Any monies which shall be so set aside or deposited by the Town and which shall remain unclaimed by the owners of such Bonds for the period of six years after the date on which such Bonds shall have become due and payable shall upon request in writing by an Authorized Officer be paid to the Town or to such officer, board or body as may then be entitled by law to receive the same, and thereafter the owners of such Bonds shall look only to the Town (to the extent permitted by law) or to such officer, board or body, as the case may be, for the payment and then only to the extent of the amounts so received without any interest thereon, and the Paying Agent shall have no responsibility with respect to such monies.

**SECTION 5.16. SEPARATE ACCOUNTS.** The monies required to be accounted for in each of the Funds and Accounts established herein may be deposited in a single bank account, and funds allocated to the various Funds and Accounts established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the monies on deposit therein and such investments for the various purposes of such Funds and Accounts as herein provided and provided further that such monies are not commingled with any funds of the Town other than Gross Revenue.

The designation and establishment of the various Funds and Accounts in and by this Resolution shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenue for certain purposes and to establish certain priorities for application of such revenue as herein provided.

**SECTION 5.17. PAYMENTS TO CREDIT PROVIDERS.** Notwithstanding any other provision herein to the contrary, if any amount applied to the payment of principal of, premium, if any, Amortization Requirements and interest on the Bonds that would have been paid from the Debt Service Account or the Redemption Fund is paid instead by a Credit Facility



or a Liquidity Facility, amounts deposited in the Debt Service Account or the Redemption Fund, as applicable, and allocable to such payment for such Bonds shall be paid by an Authorized Officer, to the extent required in any agreement with the Credit Provider, to the Credit Provider having theretofore made said corresponding payment. A Series Resolution may establish one or more subaccounts within the Debt Service Account and the Redemption Fund to segregate amounts to be paid to a Credit Provider and amounts paid from a Credit Facility or a Liquidity Facility.

## **ARTICLE VI**

### **DEPOSITARIES OF MONIES, SECURITY FOR DEPOSITS AND INVESTMENTS OF FUNDS**

**SECTION 6.01. SECURITY FOR DEPOSITS.** All monies received by or on behalf of the Town, subject to the provisions of this Resolution, shall be held in accordance herewith and shall be deposited with a Depositary or Depositaries, shall be held in trust, shall be applied only in accordance with the provisions of this Resolution and shall not be subject to lien or attachment by any creditor of the Town except as otherwise provided in this Resolution.

All monies held by an Authorized Officer and deposited with any Depositary hereunder in excess of the amount guaranteed by the Federal Deposit Insurance Corporation or other federal agency shall be continuously secured for the benefit of the Town and the owners of the Bonds in such manner as may then be provided by applicable State of Florida or federal laws or regulations regarding the security for, or granting a preference in the case of, the deposit of public funds; provided, however, that it shall not be necessary for the Paying Agent to give security for the deposits of any monies with them for the payment of the principal of, redemption premium, Amortization Requirements or the interest on any Bonds issued hereunder or for the Town to give security for any monies which shall be represented by obligations purchased under the provisions of this Article as an investment of such money.

**SECTION 6.02. INVESTMENT OF MONIES.** Monies held for the credit of the Construction Fund, the Operation and Maintenance Fund, the Gross Revenue Fund, the Sinking Fund, the Renewal and Replacement Fund, the Redemption Fund, the Rate Stabilization Fund, Surplus Fund and the Contribution Charges Fund shall, as nearly as may be practicable, be continuously invested and reinvested by an Authorized Officer in Investment Securities which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when monies held for the credit of said Funds and Accounts will be estimated by an Authorized Officer required for the purposes intended (which, in the case of the Reserve Account, may be as late as the final maturity date of the Bonds), or in Time Deposits; provided, however, that each such Time Deposit shall permit the monies so placed to be available for use at the time provided above. Any and all such investments shall comply with any requirements set forth in any certificate or other instrument of the Town with respect to preventing any Series of Bonds from being characterized as "arbitrage bonds" within the meaning of Section 148 of the Code or any successor provision thereto.

Investment Securities and Time Deposits so purchased as an investment of monies in any such Fund or Account shall be deemed at all times to be part of such Fund or Account. Except as otherwise provided herein, the interest accruing thereon and any gain realized from such investment shall be credited to, and any loss resulting from such investment shall be charged to, the respective Fund or Account. An Authorized Officer may sell or present for payment or redemption any Investment Securities so acquired whenever it shall be necessary to do so in order to provide monies to meet any payment from such Fund or Account. Neither the Town nor any agent thereof shall be liable, or responsible, for any loss resulting from any such investment. In computing the amount in any Fund or Account, other than the Reserve Account, obligations purchased as an investment of monies therein shall be valued at the market price thereof.

For the purpose of determining the amount on deposit to the credit of the Reserve Account, all obligations in which monies in such Account have been invested shall be valued at par if purchased at par or at amortized value if purchased at other than par. Amortized value, when used with respect to an obligation purchased at a premium above or discount below par, means the value as of any given time obtained by dividing the total premium or discount at which such obligation was purchased by the number of interest payments remaining on such obligation on the date of purchase and deducting the amount thus calculated for each Interest Payment Date after such purchase from the purchase price (in the case of an obligation purchased at a premium) and adding the amount thus calculated for each Interest Payment Date after such purchase to the purchase price in the case of an obligation purchased at a discount.

Any and all income received from the investment of monies in the Gross Revenue Fund, the Operation and Maintenance Fund, the Sinking Fund (excluding the Reserve Account), the Renewal and Replacement Fund, the Redemption Fund, the Rate Stabilization Fund, the Surplus Fund and the Contribution Charges Fund shall be deposited upon receipt thereof in the Gross Revenue Fund. Any and all income received from the investment of monies in the Reserve Account shall be deposited upon receipt thereof in the Gross Revenue Fund; provided, however, such income shall be retained in the Reserve Account in the event that amounts on deposit therein are less than the Reserve Account Requirement.

Any income received from the investment of monies in the Construction Fund shall remain therein until completion of the Project and, to the extent any excess income remains at the end of the Project, same shall be applied in the manner set forth in Section 4.05 of this Resolution.

## **ARTICLE VII**

### **PARTICULAR COVENANTS**

**SECTION 7.01. PAYMENT OF PRINCIPAL, INTEREST AND PREMIUM; LIMITED OBLIGATIONS.** The Town covenants that it will promptly pay the principal of and the interest on the Bonds, and any premium required for the retirement of said Bonds by purchase or redemption, at the places, on the dates and in the manner specified herein and in said Bonds.

Except as otherwise provided in this Resolution, the principal, interest and premium on the Bonds are payable solely from the Pledged Revenue which is hereby pledged to the payment thereof and the monies on deposit from time to time in the Funds and Accounts, in the manner and to the extent hereinabove particularly specified, and nothing in the Bonds or in this Resolution shall be construed as obligating the Town to pay the principal, the interest, and premium, if any, thereon except from the Pledged Revenue and the moneys on deposit from time to time in the Funds and Accounts or as pledging the full faith and credit of the Town or as obligating the Town, directly or indirectly or contingently, to levy or to pledge any form of taxation whatever therefor.

**SECTION 7.02. CONSTRUCTION OF A PROJECT.** The Town covenants that it will construct or otherwise carry out each Project for which Bonds shall be issued in accordance with any applicable Series Resolution and in conformity with law and the requirements of governmental authorities having jurisdiction thereover, and that it will complete, or cause the completion of, such Projects with all expedience practicable.

The Town further covenants that it will require each person, firm or corporation with whom it may contract for labor or materials in connection with a Project to furnish a performance bond, in such amount, if any, as may be required under Florida law or as may otherwise be required by the Authorized Officer charged with responsibility for establishing the amount of such performance bond, to insure completion and performance of such contract or, in lieu thereof, to deposit with an Authorized Officer marketable securities having a market value equal to the amount of such payment and performance bond and eligible as security for the deposit of trust funds under regulations of the Board of Governors of the Federal Reserve System, and to carry such workmen's compensation or employers liability insurance and such builders' risk insurance, if any, as may be required by law. The Town further covenants and agrees that in the event of any default under any such contract and the failure of the surety to complete the contract, it will proceed to collect under any such performance bond or securities and the proceeds of any such performance bond or securities shall forthwith, upon receipt of such proceeds, be applied toward the completion of the contract in connection with which such performance bond or securities shall have been furnished. The Town further covenants and agrees that each such contract will also provide that payments thereunder shall not be made by

the Town in excess of such retainages as required by the laws of Florida or as are established by the Town upon the recommendation of the Consulting Engineers.

**SECTION 7.03. OPERATION OF THE SYSTEM.** The Town covenants that it will establish and enforce reasonable rules and regulations governing the use of the System and the operation thereof, that all compensation, salaries, fees and wages paid by it in connection with the maintenance, repair and operation of the System will be reasonable, that no more persons will be employed by it than are necessary, that it will maintain and operate the System in an efficient and economical manner and that, from the Gross Revenue thereof, it will at all times maintain the same in good repair and in sound operating condition and will make all necessary repairs, renewals and replacements.

**SECTION 7.04. COVENANT AGAINST ENCUMBRANCES.** The Town covenants that it will pay, from legally available funds as part of Operating Expenses, all taxes and assessments or other municipal or governmental charges lawfully levied or assessed upon or in respect of the System or upon any part thereof or upon any Gross Revenue and Contribution Charges when the same shall become due and payable by the Town. Except to the extent permitted in this Resolution, the Town will not create or suffer to be created any lien or charge upon the System or any part thereof or upon the Gross Revenue or Contribution Charges ranking equally with or prior to the Bonds except, to the extent provided in a Series Resolution, the lien for the benefit of any Credit Provider securing payment of the Bonds, and that it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge, within sixty days after the same shall accrue, all lawful claims and demands against the Town for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the System or any part thereof or upon the Gross Revenue or Contribution Charges; provided, however, that nothing contained in this Section 7.04 shall require the Town to pay or cause to be discharged, or make provision for, any such lien or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

**SECTION 7.05. RETENTION OF CONSULTING ENGINEERS, RATE CONSULTANT AND ACCOUNTANTS; APPOINTMENT OF OFFICERS.** The Town covenants that it will, for the purpose of performing and carrying out the duties imposed on the Consulting Engineers or Rate Consultant by this Resolution, retain an independent engineer or rate consultant or firm or corporation of engineers or rate consultants, in each case with recognized ability and standing, and that it will, for the purpose of performing and carrying out the duties imposed on the Accountants by this Resolution, retain an independent certified public accountant or firm of certified public accountants of recognized ability and standing. Except for any fees and expenses incurred under the provisions of Section 4.03 of this Resolution, the cost of retaining Consulting Engineers, Rate Consultant and Accountants shall be treated as part of the Operating Expenses. The Town covenants that it will appoint and maintain a Finance Director, a Clerk and such other Authorized Officers as it deems appropriate, and delegate to such persons the duties imposed or permitted to be imposed upon them by this Resolution.

**SECTION 7.06. INSURANCE.** The Town covenants that it will maintain a practical insurance program, including property and comprehensive liability insurance, with reasonable terms, conditions, provisions and costs, which the Finance Director determines, with the recommendations of the Consulting Engineers, will afford adequate protection against loss, including loss of Gross Revenue and Contribution Charges, caused by damage to or destruction

of the System or any part thereof and for bodily injury and property damage. All such insurance policies shall be carried with a responsible insurance company or companies authorized and qualified under the laws of the State of Florida to assume the risks thereof.

The proceeds of all such insurance covering damage to or destruction of the System shall be deposited with an Authorized Officer and shall be available for and shall, to the extent necessary, be applied to the repair, replacement or reconstruction of the damaged or destroyed property, and shall be paid out in the manner hereinabove provided for payments from the Construction Fund. If such proceeds are more than sufficient for such purpose, the balance remaining shall be deposited to the credit of the Gross Revenue Fund. If such proceeds shall be insufficient for such purposes the deficiency may be supplied out of any monies in the Renewal and Replacement Fund and then from the Gross Revenue Fund. The proceeds of all insurance covering loss of Gross Revenue shall be deposited to the credit of the Gross Revenue Fund. The proceeds of all insurance covering loss of Contribution Charges shall be deposited to the credit of the Contribution Charges Fund.

Notwithstanding the foregoing provisions of this Section, the Town may institute and maintain self-insurance programs with regard to such risks as shall be consistent with the recommendations of the Consulting Engineers.

**SECTION 7.07. USE OF GROSS REVENUE AND CONTRIBUTION CHARGES.** The Town covenants and agrees that none of the Gross Revenue and proceeds of the Contribution Charges will be used for any purpose other than as provided in this Resolution. The Town further covenants that it will adopt such resolutions and such rules and regulations as may be necessary or appropriate to carry out the obligations of the Town under the provisions of this Resolution.

**SECTION 7.08. NO FREE SERVICE.** The Town will not render or cause to be rendered any free services of any nature by its System or any part thereof, nor will any preferential rates be established for users of the same class, and in the event the Town, or any department, agency or instrumentality, officer or employee thereof, shall avail itself of the System or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged to the Town and any such department, agency, instrumentality, officer or employee, provided, however, that this subsection shall not affect any rights of any person, firm or corporation under pre-existing agreements or contracts. Such charges shall be paid as they accrue, and the Town shall transfer from its general funds sufficient moneys to pay such charges. The revenues so received shall be deemed to be Gross Revenue and shall be deposited and accounted for in the same manner as other Gross Revenue.

**SECTION 7.09. ENFORCEMENT OF COLLECTIONS.** The Town will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, including Contribution Charges, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals and other charges which shall become delinquent to the full extent permitted or authorized by the laws of the State of Florida. The Town will, to the full extent permitted by law, under reasonable rules and regulations, shut off and discontinue the supplying of the services of the System for the nonpayment of fees, rentals or other charges for said water and sewer services, and will not restore said water and sewer services until all delinquent charges, together with interest and reasonable penalties, have been paid in full. Where the user of the sewer system is also a customer of the water system or vice versa, the Town shall furnish to such a customer a single bill containing the charges due for the use of the services and facilities of the sewer system and water system, and the Town will, to the full extent permitted by law, discontinue furnishing water service to such user in the event of the nonpayment of charges imposed for the services of the sewer system and vice versa.

SECTION 7.10. CONNECTIONS WITH THE SYSTEM. The Town will, to the full extent permitted by law, require all lands, buildings and structures within the area of the System which can use the facilities and services of the System, to connect with and use the facilities and services of the System, and to cease all other means and methods for the collection, purification, treatment and disposal of sewage and waste matter or the furnishing of water supply.

SECTION 7.11. NO COMPETING FACILITIES. The Town, to the full extent permitted by law, will not grant to parties other than the Town any franchise, license or permit, for the construction or operation of any water and sewer facilities which will be competitive with the services and facilities of the System; provided, however, that this subsection shall not affect any vested rights of any persons, firms or corporations now owning or operating water and sewer facilities.

SECTION 7.12. RECORDS, ACCOUNTS AND AUDITS. The Town covenants that it will keep accurate records and accounts of all items of cost and all expenditures relating to the Town and of the Gross Revenue and Contribution Charges earned and the application of such Gross Revenue and Contribution Charges. All expenditures must be accounted for by proper invoices or approved charge documents prior to any such expenditure.

The Town further covenants that at least quarterly it will cause to be filed with the Finance Director a report signed by the Finance Director setting forth financial statements prepared in accordance with generally accepted accounting principles applicable to the operations of the Town (a) for all months of the current Fiscal Year including the month in which said report is given, and (b) for the same months of the preceding Fiscal Year.

The Town further covenants that it will, at the end of each Fiscal Year, prepare financial statements in accordance with generally accepted accounting principles applicable to operations of the Town and that it will cause an audit of the financial statements to be made by the Accountant. Such audit will be conducted in accordance with generally accepted auditing standards applicable to operations of the Town. The audit will be completed within one hundred eighty days after the end of the Fiscal Year. Within a reasonable time thereafter reports of such audit and copies of each report shall be filed with the Finance Director and copies of such reports shall be mailed by the Finance Director to the Consulting Engineers and Rate Consultant. The scope of the Accountant's audit will be sufficient to enable it to report as to compliance by the Town with the rate covenant of this Resolution and any material non-compliance by the Town of the conditions and covenants under this Resolution.

The Town further covenants that it will cause any additional reports relating to the Town to be made as required by law. The cost of such audits and reports shall be treated as a part of the Operating Expenses.

All of the reports described in this Section 7.12 shall be made available to any Bondholder that requests same.

SECTION 7.13. SALE OR OTHER DISPOSITION OF THE SYSTEM. Except as provided in this Section, the Town shall not sell or otherwise dispose of all or any part of the System.

(a) To the extent permitted by law the Town, without restriction, may in any Fiscal Year sell, lease or otherwise dispose of assets forming a part of the System, the aggregate value of which in each such Fiscal Year does not exceed the greater of \$500,000 or one half of one per centum (1/2 of 1%) of the book value of the net property, plant and equipment of the System as shown on the audited financial statements for the latest Fiscal Year for which such financial statements are available. The proceeds of a sale pursuant to this clause (a) shall be applied as described in Section 5.07 of this Resolution or to the defeasance of Bonds pursuant to Section 12.01 of this Resolution.

(b) To the extent permitted by law the Town may in any Fiscal Year sell, lease or otherwise dispose of assets forming a part of the System in excess of the amount set forth in clause (a) of this Section, if, before any such transfer, there is delivered to the Finance Director a report of the Consulting Engineers or Rate Consultant demonstrating that the sale, lease or other disposition of such property will not have an adverse impact on the Pledged Revenue and stating his reasons therefor. In determining whether to render such report, the Consulting Engineers or the Rate Consultant shall consider the usefulness of the assets to be disposed of to the operations of the System, the uses to be made of any proceeds of a sale and the rental income to be received with respect to any lease thereof. The proceeds of a sale pursuant to this clause (b) shall be applied as described in Section 5.07 of this Resolution or to the defeasance of Bonds pursuant to Section 12.01 of this Resolution.

(c) To the extent permitted by law the Town may in any Fiscal Year sell, lease or otherwise dispose of any assets forming a part of the System without regard to the limitations and conditions in paragraphs (a) and (b) above if the Town Council by resolution declares that such assets are not needed or serve no useful purpose in connection with the maintenance and operation of the System. The proceeds of a sale pursuant to this clause (c) shall be applied as described in Section 5.07 of this Resolution or to the defeasance of Bonds pursuant to Section 12.01 of this Resolution.

(d) To the extent permitted by law, the Town may sell, lease or otherwise dispose of the assets of the entire System, if, upon the application of the proceeds of any such sale as hereinafter required, there shall be no Bonds deemed to be Outstanding under the provisions of this Resolution and the Town shall have paid or made full provision for the payment of all other obligations of the Town payable from the Gross Revenues of the System, including but not limited to, Operating Expenses then due and payable or to become due and payable, Subordinate Obligations and all other debt payable in any way from the Gross Revenues of the System and all fees then due and owing or to become due in the future with respect to Credit Facilities. The proceeds of any sale, lease or other disposition permitted by this clause (d) shall be applied first to the payment or provision for payment of the obligations, including the Bonds, set forth above, and only after all such obligations shall have been paid or full provision for their payment been made, shall the Town apply any of the such proceeds to any other lawful purpose of the Town.

No sale or any other disposition of assets of the System shall be consummated nor shall the proceeds of any such sale be applied unless prior to such consummation or application, there shall be delivered an opinion of bond counsel to the effect that such sale and the application of the proceeds as required herein will have no adverse impact on the exclusion of interest on any of the Bonds, the Subordinate Obligations or other debt payable in any way from Gross Revenues, from gross income for Federal income tax purposes.

SECTION 7.14. SUBORDINATED OBLIGATIONS. Notwithstanding any other provision of this Resolution, the Town may issue obligations other than the Bonds from time to time other than under this Resolution which are payable in whole or in part from the Pledged Revenue but only if such obligations are, by their terms, subordinated to the lien on Pledged Revenue in favor of all Bonds theretofore or thereafter issued under the provisions of this Resolution.

SECTION 7.15. OTHER INDEBTEDNESS. Subject to the provisions of Section 7.14 hereof, nothing in this Resolution shall be construed as in any way prohibiting or limiting the power of the Town to enter into agreements, including interest rate swaps, incur obligations, undertake indebtedness or otherwise enter into any financing transactions to the extent such agreements, obligations, indebtedness or financing transactions do not impose any lien upon the Pledged Revenue and are payable from sources other than Pledged Revenue. The foregoing shall include bond or revenue anticipation notes, including notes anticipated to be paid from proceeds of Bonds issued hereunder, and any other obligation of the Town payable from funds, and subject to appropriation thereof, other than Pledged Revenue.

SECTION 7.16. INVESTMENTS AND USE OF PROCEEDS TO COMPLY WITH CODE; TAXABLE BONDS.

(a) The Town covenants with the holders of each Series of Bonds (other than Taxable Bonds), that it shall comply with the requirements of the Code necessary to maintain the exclusion of interest on the Bonds from gross income for purposes of federal income taxation, including the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code, and, in particular, that it shall not make or direct the making of any investment or other use of proceeds of such Series of Bonds (or amounts deemed to be proceeds under the Code) in any manner which would cause the interest on such Series of Bonds to be or become subject to federal income taxation, nor shall it fail to do any act which is necessary to prevent such interest from becoming subject to federal income taxation.

(b) The Town covenants with the holders of each Series of Bonds (other than Taxable Bonds) that neither the Town nor any other person under its control or direction will make any investment or other use of the proceeds of such Series of Bonds (or amounts deemed to be proceeds under the Code) in any manner which would cause such Series of Bonds to be "private activity bonds" as that term is defined in Section 141 of the Code (or any successor provision thereto), except as to any Series so categorized at the time of issuance, or "arbitrage bonds" as that term is defined in Section 148 of the Code (or any successor provision thereto), and that it will comply with such sections of the Code throughout the term of the Bonds.

(c) The Town may, if it so elects, issue one or more Series of Taxable Bonds, the interest on which is (or may be) includable in the gross income of the holders thereof for federal income taxation purposes, so long as each Bond of such Series states in the body thereof that interest payable thereon is (or may be) subject to federal income taxation and provided that the issuance thereof will not cause the interest on any other Bonds theretofore issued hereunder to be or become subject to federal income taxation.

(d) Notwithstanding anything to the contrary contained in subparagraphs (a) through (c) hereof, the Town may, if it so elects, issue one or more Series of Bonds as "private activity bonds," as that term is defined in Section 141 (or any successor provision thereto) of the Code and which are "qualified bonds," as that term is defined in Section 141 (or any successor provision thereto) of the Code and, in the event it does so the Town covenants that it will not make or direct the making of any investment nor will

it use the proceeds of any such Series in a manner which would make such Bonds not “qualified bonds.”

**SECTION 7.17. ARBITRAGE REBATE COVENANTS.** The Town covenants and agrees to establish the Rebate Fund with a Depository. Prior to the issuance of each Series of Bonds, the Town shall execute and deliver a certificate containing arbitrage rebate covenants (the “Rebate Covenants”) as to said Series of Bonds. The Town shall make or cause to be made payments from the Rebate Fund of amounts required to be deposited therein to the United States of America in the amounts and at the times required by the Rebate Covenants. The Town covenants for the benefit of the Bondholders that it will comply with the requirements of the Rebate Covenants. There shall be excluded from the pledge and lien of this Resolution the Rebate Fund, together with all monies and securities from time to time held therein and all investment earnings derived therefrom. The Town shall not be required to comply with the requirements of this Section 7.17, or with the Rebate Covenants, in the event that the Town obtains an opinion of counsel with expertise in the field of tax-exempt municipal finance that (a) such compliance is not required in order to maintain the federal income tax exemption of interest on the Bonds and/or (b) compliance with some other requirement is necessary to maintain the federal income tax exemption of interest on the Bonds or is a permissible substitute for any deleted requirement. The Town shall adopt an amendment to this Resolution, or to the Rebate Covenants, as may be applicable, to reflect the deletion or substitution of any such requirement. In addition, the Town shall not be required to comply with this Section 7.17 to the extent that any Bonds issued under this Resolution shall be intended by the Town, on the date of issuance of the Bonds, to be Taxable Bonds.

**SECTION 7.18. COVENANTS WITH CREDIT PROVIDERS.** The Town may make such covenants as it may, in its sole discretion, determine to be appropriate with any Credit Provider or other financial institution that shall agree to insure or to provide for Bonds of any one or more Series credit or liquidity support that shall enhance the security or the value of such Bonds. Such covenants may be set forth in the applicable Series Resolution and shall be binding on the Town, the Bond Registrar, the Paying Agent and all the holders of Bonds the same as if such covenants were set forth in this Resolution; provided, however, such covenants may not impair the rights of any existing Bondholders in any manner that, pursuant to Section 11.02 hereof, would require such Bondholder’s consent.

## **ARTICLE VIII**

### **CERTAIN MATTERS RELATING TO THE BOND REGISTRAR AND PAYING AGENT**

**SECTION 8.01. CERTAIN MATTERS RELATING TO THE BOND REGISTRAR AND PAYING AGENT.** The Bond Registrar and Paying Agent (hereinafter sometimes referred to collectively as the “Fiduciary”) will signify the acceptance of the duties and obligations imposed upon the Fiduciary by this Resolution, any Series Resolution and any other agreements with the Town by executing and delivering to the Town a written acceptance thereof, and by executing such acceptance, the Fiduciary shall be deemed to have accepted such duties and obligations with respect to the Bonds, upon and subject to the following provisions:



SECTION 8.02. RESPONSIBILITIES OF FIDUCIARY. The statements contained herein and in the Bonds shall be taken as the statements of the Town and the Fiduciary assumes no responsibility for the correctness of same. The Fiduciary makes no representation as to the validity or sufficiency of this Resolution, any Series Resolution or as to the security afforded by the foregoing and the Fiduciary shall incur no liability with respect thereof. The Bond Registrar shall, however, be responsible for its representation contained in its certificate of authentication on the Bonds. The Fiduciary shall not be under any responsibility or duty with respect to the application of any monies paid by such Fiduciary in accordance with the provisions of this Resolution or any Series Resolution to or upon the order of the Town or to any other fiduciary. The Fiduciary shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit with respect thereof, or to advance any of its own monies, unless properly indemnified. Subject to the provisions of the following paragraph, the Fiduciary shall not be liable in connection with the performance of its duties hereunder except for its own gross negligence or willful default.

SECTION 8.03. EVIDENCE ON WHICH FIDUCIARY MAY ACT. The Fiduciary, upon receipt of any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document furnished to it pursuant to any provision of this Resolution shall examine such instrument to determine whether it conforms to the requirements of this Resolution and any Series Resolution and shall be protected in acting upon any such instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. Each Fiduciary may reasonably consult with counsel and certified public accounting firms, who may or may not be counsel to, or accountants for, the Town, and the opinion of such counsel or accountants shall be full and complete authorization and protection in respect of any action taken or suffered by it under this Resolution and any Series Resolution in good faith and in accordance therewith.

Whenever the Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Resolution and any Series Resolution, such matters (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of an Authorized Officer, and such certificate shall be full warrant for any action taken or suffered in good faith based thereon; but in its discretion, the Fiduciary may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as may seem reasonable to it.

Except as otherwise expressly provided this Resolution and any Series Resolution, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision thereof by the Town to the Fiduciary shall be sufficiently executed in the name of the Town by an Authorized Officer.

SECTION 8.04. COMPENSATION. Prior to its appointment, the Fiduciary shall file with the Town a negotiated schedule of anticipated fees and charges for services to be performed pursuant to this Resolution and any Series Resolution. The Town shall pay to the Fiduciary from time to time pursuant to such schedule reasonable compensation for all services rendered, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and other persons not regularly in its employ, incurred in and about the performance of its powers and duties under this Resolution and any Series Resolution. To the extent permitted by law, the Town hereby agrees to indemnify the Fiduciary and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity brought by third parties, or any other expenses, fees or charges of any character or nature which it may incur or with which it may be threatened by reason of such third party threats or proceedings, except in the case of the Fiduciary's own gross negligence or willful

default, and in connection therewith to indemnify the Fiduciary against any and all expenses, including attorneys' fees and the costs of defending any action, suit or proceeding or resisting any claim, including appellate proceedings.

SECTION 8.05. CERTAIN PERMITTED ACTS. The Fiduciary may become the owner of any Bonds, with the same rights it would have if it were not a Fiduciary. To the extent permitted by law, the Fiduciary may act as Depositary for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Resolution or any Series Resolution, whether or not any such committee shall represent the holders of a majority in principal amount of the Bonds then outstanding.

SECTION 8.06. MERGER OR CONSOLIDATION OF FIDUCIARY. Any company into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which any Fiduciary may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a bank or trust company organized under the laws of any state of the United States or a national banking association and shall be authorized by law to perform all duties imposed upon it by this Resolution and any Series Resolution, shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.

SECTION 8.07. ADOPTION OF AUTHENTICATION. In case any of the Bonds contemplated to be issued under this Resolution shall have been authenticated but not delivered, any successor Bond Registrar may adopt the certificate of authentication of any predecessor Bond Registrar so authenticating such Bonds and deliver such Bonds so authenticated; and in case any of the Bonds shall not have been authenticated, any successor Bond Registrar may authenticate such Bonds in the name of, but as successor to, the predecessor Bond Registrar, or in the name of the successor Bond Registrar; and, in all such cases, such certificate shall be given full force and effect.

SECTION 8.08. RESIGNATION OR REMOVAL OF PAYING AGENT AND APPOINTMENT OF SUCCESSOR. The Paying Agent may, at any time, resign and be discharged of the duties and obligations created by this Resolution and any Series Resolution by giving ninety (90) days' written notice to the Town and any other Paying Agent. So long as no Event of Default or an event which, with notice or passage of time, or both, would become an Event of Default, shall have occurred and be continuing, the Paying Agent may be removed at any time by an instrument filed with such Paying Agent and signed by an Authorized Officer. Any successor Paying Agent shall be appointed by the Town and shall be a bank or trust company organized under the laws of any state of the United States or a national banking association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Resolution.

In the event of the resignation or removal of the Paying Agent, such Paying Agent shall pay over, assign and deliver any monies held by it as Paying Agent to its successor, or if there be no successor, to the Town. In the event that for any reason there shall be a vacancy in the office of any Paying Agent, the Town shall act as such Paying Agent.

**SECTION 8.09. RESIGNATION AND REMOVAL OF BOND REGISTRAR AND APPOINTMENT OF SUCCESSOR.** The Bond Registrar may, at any time, resign and be discharged of the duties and obligations created by this Resolution and any Series Resolution by giving at least ninety (90) days' written notice to the Town. So long as no Event of Default or an event which, with notice or passage of time, or both, would become an Event of Default, shall have occurred and be continuing, the Bond Registrar may be removed at any time by an instrument filed with such Bond Registrar and signed by an Authorized Officer.

## **ARTICLE IX**

### **EVENTS OF DEFAULT; REMEDIES**

**SECTION 9.01. EXTENSION OF INTEREST PAYMENT.** In case the time for the payment of interest on any Bond shall be extended by operation of law, whether or not such extension be by or with the consent of the Town, such interest so extended shall not be entitled in case of default hereunder to the benefit or security of this Resolution except subject to the prior payment in full of the principal of all Bonds then outstanding and of all interest the time for the payment of which shall not have been extended.

**SECTION 9.02. EVENTS OF DEFAULT.** Each of the following events is hereby declared an "Event of Default":

- (a) payment of the principal of and the redemption premium, if any, on any of the Bonds shall not be made when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or
- (b) payment of any installment of interest on any of the Bonds shall not be made when the same shall become due and payable; or
- (c) redemption of Term Bonds in accordance with an Amortization Requirement shall not be made as required; or
- (d) the Town admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself or for all or a substantial part of any Project; or
- (e) the Town is adjudged insolvent by a court of competent jurisdiction, or is adjudged a bankrupt on a petition in bankruptcy filed against the Town, or an order, judgment or decree is entered by a court of competent jurisdiction appointing, without the consent of the Town, a receiver or trustee of the Town or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within ninety days from the date of entry thereof; or
- (f) the Town shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof; or

(g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Town or of the whole or any substantial part of its property, and such custody or control shall not be terminated within ninety days from the date of assumption of such custody or control; or

(h) the Town shall default in its obligation to duly and punctually perform any other of the material covenants, conditions, agreements and provisions contained in the Bonds or in this Resolution and such default shall continue for thirty days after written notice specifying such default and requiring same to be remedied shall have been given to the Town by the registered owners of not less than ten percent in aggregate principal amount of the Bonds then Outstanding; provided, however, that if the default specified in this clause (h) shall be of a type which cannot be remedied within thirty days, it shall not constitute an event of default if the Town shall begin to remedy such default within such thirty-day period and is diligently pursuing such remedy.

SECTION 9.03. ACCELERATION OF MATURITIES OF BONDS. Upon the happening and continuance of any Event of Default specified in clauses (a) through (h) of Section 9.02 of this Article, then and in every such case the holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding may, by a notice in writing to the Town, declare the principal of all of the Bonds then Outstanding to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything contained in the Bonds or in this Resolution to the contrary notwithstanding; provided, however, that if at any time after the principal of the Bonds shall have been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Resolution, monies shall have accumulated in the Sinking Fund sufficient to pay the principal of all matured Bonds then outstanding, other than the principal of any Bonds not then due except by virtue of such declaration, and the interest accrued on such Bonds since the last Interest Payment Date, and all amounts then payable by the Town hereunder shall have been paid or a sum sufficient to pay the same shall have been deposited by the Town with the Paying Agent, and every other default in the observance or performance of any covenant, condition, agreement or provision contained in the Bonds or in this Resolution (other than a default in the payment of the principal of such Bonds then due only because of a declaration under this Section) shall have been remedied, then and in every such case the holders of not less than a majority in aggregate principal amount of the Bonds not then due except by virtue of such declaration and then Outstanding may, by written notice to the Town, rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 9.04. ENFORCEMENT OF REMEDIES BY BONDHOLDERS. Upon the happening and continuance of any Event of Default specified in Section 9.02 of this Article, the holders of not less than ten percent in aggregate principal amount of the Bonds then Outstanding hereunder may proceed to protect and enforce the rights of the Bondholders, under Florida law or under this Resolution, by such suits, actions or special proceedings in equity or at law, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as such Bondholders shall deem most effectual to protect and enforce such rights.

SECTION 9.05. PRO RATA APPLICATION OF FUNDS. Anything in this Resolution to the contrary notwithstanding, if at any time the monies in the Sinking Fund shall not be sufficient to pay the principal of, the premium, if any, or the interest on the Bonds as the same are then due and payable (either by their terms or by the acceleration of maturities under the provisions of Section 9.03 of this Article), such monies together with any monies then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Article or otherwise, shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become due and payable or shall have been declared due and payable, all such monies shall be applied:

First: to the payment of the persons entitled thereto of all installments of interest then due and payable on the Bonds, in the order in which such installments become due and payable on the Bonds, and, if the amount available shall not be sufficient to pay in full any particular installment on the Bonds, then the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

Second: if all obligations described in the preceding paragraph have been satisfied, to the payment of the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which sufficient monies are held pursuant to the provisions of this Resolution), in the order of their due dates, with interest upon such Bonds at the respective rates specified therein from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full the principal of Bonds due on any particular date, together with such interest, then to the payment first of such interest, ratably according to the amount of such interest due on such date, and then to the payment of such principal, ratably according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds; and

Third: if all obligations described in the preceding paragraph have been satisfied, to the payment of the interest on and principal of the Bonds, to the purchase and retirement of Bonds and to the redemption of Bonds, all in accordance with the provisions of Article V of this Resolution.

(b) If the principal of all the Bonds shall have become due and payable or shall have been declared due and payable, all such monies shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amount due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all the Bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded and annulled under the provisions of Section 9.03 of this Article, then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the monies remaining in and thereafter accruing to the Sinking Fund shall be applied in accordance with the provisions of paragraph (a) of this Section.

The provisions of this Section are in all respects subject to the provisions of Section 9.01 of this Resolution. Whenever monies are to be applied by the Town pursuant to the provisions of this Section, such monies shall be applied by the Town at such times, and from time to time, as the Town in its sole discretion shall determine, having due regard to the amount of such monies available for application and the likelihood of additional monies becoming available for such application in the future; the deposit of such monies with the Paying Agent or otherwise setting

aside such monies in trust for the proper purpose, shall constitute proper application by the Town; and the Town shall incur no liability whatsoever to any Bondholder, Credit Provider, or to any other person for any delay in applying any such funds, so long as the Town acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Resolution as may be applicable at the time of application. Whenever the Town shall exercise such discretion in applying such funds it shall fix the date upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Town shall give such notice as it may deem appropriate of the fixing of any such date, and shall not be required to make payment to the owner of any Bond until such Bond shall be surrendered to it for appropriate endorsement.

**SECTION 9.06. EFFECT OF DISCONTINUANCE OF PROCEEDINGS.** In case any proceeding taken by any Bondholder on account of any default shall have been discontinued or abandoned for any reason, then and in every such case, the Town and the Bondholder shall be restored to their former positions and rights hereunder, respectively, and all rights and remedies of the Bondholders shall continue as though no such proceeding had been taken.

**SECTION 9.07. RESTRICTION ON INDIVIDUAL BONDHOLDER ACTIONS.** No holder of any of the Bonds hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Resolution, or to enforce any right hereunder except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the benefit of all holders of such Bonds.

**SECTION 9.08. NO REMEDY EXCLUSIVE.** No remedy herein conferred upon the Bondholders is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

**SECTION 9.09. DELAY NOT A WAIVER.** No delay or omission of a Bondholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Resolution to the Bondholders may be exercised from time to time and as often as may be deemed expedient.

**SECTION 9.10. RIGHT TO ENFORCE PAYMENT OF BONDS.** Nothing in this Resolution shall affect or impair the right of any Bondholder to enforce the payment of the principal of, premium, if any, and interest on his Bond, or the obligation of the Town to pay the principal of, premium, if any, and interest on each Bond to the owners thereof at the time and place in said Bond expressed.

**SECTION 9.11. RIGHTS OF CREDIT PROVIDER.** In the event that, following an Event of Default under Section 9.02, a Credit Provider honors its obligation to make payments on a Series of Bonds, said Credit Provider shall be entitled to exercise the rights of the owners of the said Bonds for the purposes of this Article.

Anything in this Resolution to the contrary notwithstanding, while an Event of Default has occurred and is continuing hereunder, any Credit Provider or owners of a majority in principal amount of the Bonds then Outstanding hereunder shall have the right, by an instrument in writing executed and delivered to the Town, to direct the time and method of conducting all proceedings available to the Town under this Resolution or exercising any trust or power conferred on the Town by this Resolution; provided, however, that the Credit Provider shall have no such rights if it has defaulted under its obligations. In the event of a conflict between the directions of any Credit Provider and those of the owners of the Bonds, with respect to an Event of Default described in clause (i) of Section

9.02 hereof, the directions of any Credit Provider shall prevail, and with respect to any other Event of Default the directions of the owners of the Bonds shall prevail.

## **ARTICLE X**

### **EXECUTION OF INSTRUMENTS BY BONDHOLDERS AND PROOF OF OWNERSHIP OF BONDS**

SECTION 10.01. EXECUTION OF INSTRUMENTS BY BONDHOLDERS AND PROOF OF OWNERSHIP OF BONDS. Any request, direction, consent or other instrument in writing required or permitted by this Resolution to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders or their duly authorized attorneys or legal representatives. Proof of the execution of any such instrument and of the ownership of Bonds shall be sufficient for any purpose of this Resolution and shall be conclusive in favor of the Town with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the verification of any officer in any jurisdiction who, by the laws thereof, has power to take affidavits within such jurisdiction to the effect that such instrument was subscribed and sworn to before him, or by an affidavit of a witness to such execution. Where such execution is on behalf of a person other than an individual such verification or affidavit shall also constitute sufficient proof of the authority of the signer thereof.

(b) Ownership of Bonds should be proved by registration books of the Town, or the Bond Registrar on behalf of the Town, maintained as provided in this Resolution.

Nothing contained in this Resolution shall be construed as limiting the Town to such proof, it being intended that the Town may accept any other evidence of the matters herein stated which it may deem sufficient. Any request or consent of the holder of any Bond shall bind every future holder of the same Bond in respect of anything done by the Town pursuant to such request or consent.

## **ARTICLE XI**

### **SUPPLEMENTS AND AMENDMENTS**

SECTION 11.01. SUPPLEMENTAL RESOLUTION WITHOUT BONDHOLDERS' CONSENT. The Town, from time to time and at any time, without obtaining consent from Bondholders, may adopt such resolutions supplemental hereto as shall not be inconsistent with the terms and provisions hereof (which supplemental resolutions shall thereafter form a part hereof):

(a) to cure any ambiguity or defect or omission or to correct any inconsistent provisions in this Resolution or in any Supplemental Resolution; or

(b) to grant to or confer upon the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders; or

(c) to add to the conditions, limitations and restrictions on the issuance of Bonds under the provisions of this Resolution other conditions, limitations and restrictions thereafter to be observed; or

(d) to add to the covenants and agreements of the Town in this Resolution other covenants and agreements thereafter to be observed by the Town or to surrender any right or power herein reserved to or conferred upon the Town; or

(e) to permit the issuance of Bonds, the interest on which is intended to be exempt from federal income taxation, in coupon form, if as a condition precedent to the enactment of such supplemental resolution, there shall be delivered to the Town an opinion of counsel with expertise in the field of tax-exempt municipal finance to the effect that the issuance of Bonds in coupon form is then permitted by law and that issuance of such Bonds in coupon form would not cause interest on such Bonds to be included in gross income for federal income tax purposes; or

(f) to qualify the Bonds or any of the Bonds for registration under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended; or

(g) to qualify this Resolution as an “indenture” under the Trust Indenture Act of 1939, as amended; or

(h) to make such changes as may be necessary to adjust the terms hereof so as to facilitate the issuance of Variable Rate Bonds, Capital Appreciation Bonds, Capital Appreciation and Income Bonds, Convertible Bonds, Put Bonds and such other form of Bonds as may be marketable from time to time; or

(i) to make such changes as may be necessary to maintain the tax exemption applicable to any Series as said exemption was intended to exist, if at all, at the time of issuance of such Series; or

(j) to make such changes as may evidence the right and interest herein of a Credit Provider; or

(k) to make such changes as may be necessary in order to obtain a rating or ratings on any Series of Bonds from one or more nationally recognized rating agencies; or

(l) to specify and determine the matters and things referred to in Sections 2.06, 2.07 or 2.08 hereof, and any other matters and things relative to such Bonds which are not contrary to or inconsistent with this Resolution as theretofore in effect, or to amend, modify or rescind any provision in this Resolution at any time prior to the first delivery of such Bonds.

At least thirty days prior to the adoption of any supplemental resolution for any of the purposes of this Section 11.01, the Town shall cause a notice of the proposed adoption of such supplemental resolution to be mailed, postage prepaid, to all owners of Bonds at their addresses as they appear on the registration books of the Town maintained



by the Bond Registrar and to all rating agencies then rating the Bonds. Such notice shall briefly set forth the nature of the proposed supplemental resolution and shall state that copies thereof are on file at the offices of the Town for inspection by all Bondholders. A failure on the part of the Town to mail the notice required by this Section 11.01 shall not affect the validity of the supplemental resolution.

**SECTION 11.02. SUPPLEMENTAL RESOLUTION WITH BONDHOLDERS' CONSENT.** Subject to the terms and provisions contained in this Section 11.02 and Section 11.01 and 11.04 hereof, and not otherwise, the holders of not less than fifty-one percent in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Resolution to the contrary notwithstanding, to consent to and approve the enactment of such resolution or resolutions supplemental hereto as shall be deemed necessary or desirable by the Town for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Resolution or in any supplemental resolution; provided, however, that nothing herein contained shall permit, or be construed as permitting, (a) an extension of the maturity of the principal of or the interest on any Bond issued hereunder, or (b) a reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon, or (c) the creation of a lien upon or a pledge of Pledged Revenue other than the lien and pledge created by this Resolution or permitted to be created by this Resolution, or (d) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental resolution. Nothing herein contained, however, shall be construed as making necessary the approval by Bondholders of the adoption of any supplemental resolution as authorized in Section 11.01 or Section 11.04 of this Article.

If at any time the Town shall determine that it is necessary or desirable to enact any supplemental resolution for any of the purposes of this Section, an Authorized Officer shall cause notice of the proposed enactment of such supplemental resolution to be mailed, postage prepaid, to all owners of Bonds at their addresses as they appear on the registration books and to all rating agencies then rating the Bonds. Such notice shall briefly set forth the nature of the proposed supplemental resolution and shall state that copies thereof are on file at the registered office of the Town for inspection by all Bondholders. The Town shall, not, however, be subject to any liability to any Bondholder by reason of its failure to cause the notice required by this Section 11.02 to be mailed and any such failure shall not affect the validity of such supplemental resolution when consented to and approved as provided in this Section 11.02. A subsequent resolution of the Town may provide that the form and manner of providing notice to Bondholders be in some different form if so determined by the Town.

Whenever the Town shall deliver to the Mayor an instrument or instruments in writing purporting to be executed by the holders of not less than fifty-one percent in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed supplemental resolution and shall specifically consent to and approve the enactment thereof in substantially the form thereof referred to in such instrument, thereupon, but not otherwise, the Town may enact such supplemental resolution in substantially such form, without liability or responsibility to any owner of any Bond, whether or not such registered owner shall have consented thereto. Notwithstanding the foregoing, the Town may enact the proposed supplemental resolution prior to receiving the requisite consents provided the effective date of said resolution, by its terms, is delayed until, and conditioned upon, receipt of the required consents.

If the owners of not less than fifty-one percent in aggregate principal amount of the Bonds outstanding at the time of the enactment (or effective date) of such supplemental resolution shall have consented to and approved the enactment thereof as herein provided, no owner of any Bond shall have any right to object to the enactment of such supplemental resolution, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Town from adopting the same or from taking any action pursuant to the provisions thereof.

Any consent given by a Bondholder shall be binding with respect to all Bonds owned by said Bondholder on the date consent is given, and shall bind all future owners of said Bonds, so that said future owners shall have been deemed to consent to the proposed supplemental resolution to the same force and effect as if they had executed a consent as of the date of enactment thereof.

The consent of the owners of any Series of Bonds to be issued hereunder shall be deemed given if the underwriters or initial marketing group consent in writing to such supplemental resolution and the substance of such supplemental resolution is disclosed in the official statement or other offering document pursuant to which such Series of Bonds are offered and sold to the public.

Upon the enactment of any supplemental resolution pursuant to the provisions of this Section, this Resolution shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Resolution of the Town and all holders of Bonds then outstanding shall thereafter be determined, exercised and enforced in all respects under the provisions of this Resolution as so modified and amended.

**SECTION 11.03. SUPPLEMENTAL RESOLUTIONS PART OF RESOLUTION.** Any supplemental resolution enacted in accordance with the provisions of this Resolution and approved as to legality by the Town Attorney and/or bond counsel shall thereafter form a part of this Resolution, and all of the terms and conditions contained in any such supplemental resolution as to any provisions authorized to be contained therein shall be and shall be deemed to be part of the terms and conditions of this Resolution for any and all purposes. In case of the enactment and approval of any supplemental resolution, express reference may be made thereof in the text of any Bonds issued thereafter, if deemed necessary or desirable by the Town.

**SECTION 11.04. SERIES RESOLUTION NOT A SUPPLEMENTAL RESOLUTION.** For purposes of this Article XI, a resolution, such as a Series Resolution, that relates only to the issuance of a particular Series of Bonds hereunder and that does not purport to alter or amend the rights or security of any holders of any Bonds of any other Series issued hereunder shall not be deemed or considered to be a supplemental resolution.

## **ARTICLE XII**

### **DEFEASANCE**

**SECTION 12.01. DEFEASANCE.** If all the Outstanding Bonds shall have been paid as provided below, and the Town shall pay or cause to be paid to the Paying Agent and Bond Registrar and any other agents and other parties designated by a Series Resolution, all sums of money due or to become due according to the provisions hereof and such other instruments as may be entered into with such agents and parties, then and in that case the right, title and interest of the Bondholders hereunder shall cease, terminate and become void, and such Bonds shall cease to be entitled to any lien, benefit or security under this Resolution. In such event, this Resolution shall be discharged and released and amounts held in the Funds and Accounts created hereunder shall be released to the Town for its own purposes.

Any Bond shall be deemed to have been paid within the meaning and with the effect expressed in this Section 12.01 when the whole amount of the principal of and interest on such Bond shall have been paid or when (a) there shall have been deposited with the Paying Agent or other appropriate Escrow Agent solely for the owner of such Bond and other Bonds being defeased and specifically designated for the purpose of defeasance either monies, Escrow Securities, or any combination thereof, in an amount which shall be verified by an Accountant as sufficient, with interest earnings thereon, to pay when due the principal of and premium, if any, and interest due and to become due on such Bonds on or prior to the redemption date or maturity date thereof, as the case may be, and (b) in the event such Bond does not mature and is not to be redeemed within the next succeeding sixty days, the Town shall have notified, as soon as practicable, the owner of such Bond, in the manner set forth in Article III hereof, stating that the deposit of monies and/or Escrow Securities required by clause (a) of this paragraph has been made with the Paying Agent or other Escrow Agent solely for the owner of such Bond and other Bonds being defeased, and that such Bond is deemed to have been paid in accordance with this Section and stating such maturity or redemption date upon which monies are to be available for the payment of the principal of and premium, if any, and interest on such Bond.

Except as hereinafter provided, neither the monies nor Escrow Securities deposited with the Paying Agent or other Escrow Agent pursuant to this Section 12.01 nor principal or interest payments on any such obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and premium, if any, and interest on said Bonds. Monies and Escrow Securities held by an Escrow Agent may be substituted for other monies and Escrow Securities to the extent permitted by an Escrow Deposit Agreement. As to Variable Rate Bonds, the amount required for the interest thereon shall be calculated at the maximum rate permitted by the terms of the provisions which authorized the issuance of such Variable Rate Bonds; provided, however, that if on any date, as a result of such Variable Rate Bonds having borne interest at less than such maximum rate for any period, the total amount of monies and Escrow Securities on deposit for the payment of interest on such Variable Rate Bonds is in excess of the total amount which would have been required to be deposited on such date in respect of such Variable Rate Bonds in order fully to discharge and satisfy such Bonds pursuant to the provisions of this Section, the Town may use the amount of such excess, free and clear of any trust, lien, security interest, pledge or assignment securing said Variable Rate Bonds or otherwise existing under this Resolution; subject however, to the Town's obtaining an opinion from a law firm with expertise in the field of tax-exempt municipal bonds that such use will not cause such Bonds to lose their federal tax exemption if interest on such Bonds was intended to be excluded from gross income for federal income tax purposes when originally issued. Notwithstanding any of the provisions of this Resolution to the contrary, Put Bonds may only be fully discharged and satisfied either by paying the principal of and interest on said Bonds as they become due and payable or by depositing monies or Escrow Securities which shall be sufficient at the time of such deposit to pay when due the maximum amount of principal of and redemption premium, if any, and interest on such Put Bonds which could become payable to the owners of such Bonds upon the exercise of any options provided to the owners of such Bonds and the Town; provided, however, that if, at the time a deposit is made pursuant to this paragraph, the options originally exercisable on the Put Bonds are no longer exercisable, such Bonds shall not be considered Put Bonds for these purposes.

If any portion of the monies described for the payment of the principal of and redemption premium, if any, and interest on any portion of Bonds is not required for such purpose, the Town may use the amount of such excess, free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under this Resolution.

Notwithstanding the foregoing, the provisions of this Article XII shall not operate to extinguish the covenants and obligations of the Town set forth in Sections 7.16 and 7.17 hereof.

## **ARTICLE XIII**

### **MISCELLANEOUS PROVISIONS**

**SECTION 13.01. EFFECT OF COVENANTS.** All covenants, stipulations, obligations and agreements of the Town contained in this Resolution shall be deemed to be covenants, stipulations, obligations and agreements of the Town and of each department and agency of the Town to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall bind or inure to the benefit of the successor or successors thereof from time to time and any officer, board, body or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Town by the provisions of this Resolution shall be exercised or performed by the Town Council of the Town or by such other officers, board, body or commission as may be required by law to exercise such powers or to perform such duties.

No covenants, stipulation, obligation or agreement herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any member, agent or employee of the Town in his individual capacity, and neither the Town Council of the Town nor any official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

**SECTION 13.02. MANNER OF GIVING NOTICE.** Any notice, demand, direction, request or other instrument authorized or required by this Resolution to be given to or filed with the Town shall be deemed to have been sufficiently given or filed for all purposes of this

Resolution if and when sent by registered mail, return receipt requested to the Town at 6591 S.W. 45th Street, Davie, Florida 33314-3399, Attention: Finance Director.

All documents received by the Town Administrator under the provisions of this Resolution shall be retained in his possession, subject at all reasonable times to the inspection of any Bondholder, and the agents and representatives thereof.

SECTION 13.03. SUCCESSIONSHIP OF TOWN. In the event that the offices of any officer of the Town mentioned in this Resolution shall be abolished or any two or more of such offices shall be merged or consolidated, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the Town or otherwise, all powers conferred and all obligations and duties imposed upon such officer shall be performed by the officer succeeding to the principal functions thereof or by the officer upon whom such powers, obligations and duties shall be imposed by law. The Town may be dissolved or terminated in accordance with the Act only pursuant to a plan of transfer in connection with which an appropriate general purpose unit of local government agrees to accept and assume all obligations of the Town hereunder, including, specifically, the obligation to collect and enforce the Gross Revenue and Contribution Charges and to pay the principal and interest on the Bonds from the Pledged Revenue and the monies on deposit in the Funds and Accounts.

SECTION 13.04. INCONSISTENT RESOLUTIONS. All resolutions and parts thereof which are inconsistent with any of the provisions of this Resolution are hereby declared to be inapplicable to the provisions of this Resolution.

SECTION 13.05. FURTHER ACTS. The officers and agents of the Town are hereby authorized and directed to do all the acts and things required of them by the Bonds and this Resolution, for the full, punctual and complete performance of all of the terms, covenants, provisions and agreements contained in the Bonds and this Resolution.

SECTION 13.06. HEADINGS NOT PART OF RESOLUTION. Any headings preceding the texts of the several Articles and Sections hereof and any table of contents, marginal notes or footnotes appended to copies hereof shall be solely for convenience of reference, and shall not constitute a part of this Resolution, nor shall they affect its meaning, construction or effect.

SECTION 13.07. TOWN AND BONDHOLDERS ALONE HAVE RIGHTS UNDER RESOLUTION. Except as herein otherwise expressly provided, nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the Town and the owners of the Bonds, any right, remedy or claim, legal or equitable, under or by reason of this Resolution or any provision hereof, this Resolution and all its provisions being intended to be and being for the sole and exclusive benefit of the Town and the owners from time to time of the Bonds.

SECTION 13.08. EFFECT OF PARTIAL INVALIDITY. In case any one or more of the provisions of this Resolution or of any Bonds shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution or of the Bonds, but this Resolution and the Bonds shall be construed and enforced as if such illegal or

invalid provision had not been contained therein. The Bonds are issued and this Resolution is adopted with the intent that the laws of the State of Florida shall govern their construction.

SECTION 13.09. SALE OF BONDS. The Bonds shall be issued and sold at one time or from time to time and at such price or prices consistent with law and the requirements of this Resolution as the Town shall hereafter determine by one or more Series Resolutions.

SECTION 13.10. AUTHORITY TO PURCHASE OR DEAL IN BONDS. Any bank or trust company acting as Bond Registrar or Paying Agent under this Resolution, and its directors, officers, employees or agents may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Bondholder may be entitled to take with like effect as if such bank or trust company were not the Bond Registrar or Paying Agent under this Resolution.

SECTION 13.11. CAPITAL APPRECIATION BONDS AND CAPITAL APPRECIATION AND INCOME BONDS. For the purposes of (a) receiving payment of the redemption price if a Capital Appreciation Bond is redeemed prior to maturity, or (b) receiving payment of a Capital Appreciation Bond if the principal of all Bonds becomes due and payable under the provisions of this Resolution, or (c) computing the amount of Bonds held by the holder of a Capital Appreciation Bond in giving to the Town or any trustee or receiver appointed to represent the Bondholders any notice, consent, request or demand pursuant to this Resolution for any purpose whatsoever, the principal amount of a Capital Appreciation Bond shall be deemed to be its Accreted Value. For all of the foregoing purposes as they relate to Capital Appreciation and Income Bonds, the principal amount of a Capital Appreciation and Income Bond, on or prior to its Interest Commencement Date, shall be its Appreciated Value.

SECTION 13.12. PAYMENTS DUE ON SATURDAYS, SUNDAYS OR HOLIDAYS. In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of Bonds shall be a Saturday, Sunday or a day on which the Paying Agent is required, or authorized and not prohibited, by law (including executive orders) to close and is closed, then payment of such interest or principal and any redemption premium need not be mailed by the Paying Agent on such date but may be mailed on the next succeeding business day on which the Paying Agent is open for business with the same force and effect as if mailed on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date of maturity.

SECTION 13.13. SUSPENSION OF PUBLICATION OR MAIL. If, because of the temporary or permanent suspension of publication of any newspaper or financial journal, the suspension of delivery of registered mail or, for any other reason, the Town shall be unable to publish in a newspaper or financial journal or mail by registered mail any notice required to be published or mailed by the provisions of this Resolution, the Town shall give such notice in such other manner as in the judgment of the Town shall most effectively approximate such publication or mailing thereof, and the giving of such notice in such manner shall for all purposes of this Resolution be deemed to be in compliance with the requirement for the publication or mailing thereof. Except as otherwise provided herein, for all purposes of this Resolution, anything required to be mailed shall be deemed mailed upon the deposit of the item with the U.S. Postal

Service, by registered mail, return receipt requested and addressed to the addressee as set forth in Section 13.02 hereof or otherwise provided in this Resolution.

SECTION 13.14. RESOLUTION EFFECTIVE. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Town of Davie, Florida, on the 6th day of August, 2003.

[SEAL]

TOWN OF DAVIE, FLORIDA

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Mayor

ATTEST:

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Town Clerk





**EXHIBIT "A"**

**[FORM OF BOND]**

**[Face of Bond]**

No. \_\_\_\_

\$ \_\_\_\_\_

**United States of America**

**State of Florida**

**Town of Davie, Florida**

**Water and Sewer Revenue Bond**

**Series \_\_\_\_\_**

**Maturity Date**

**Interest Rate**

**Dated Date**

**CUSIP**

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

The Town of Davie, Florida (the "Town"), a municipal corporation created and existing under the Constitution and laws of the State of Florida, for value received, hereby promises to pay to the registered owner shown above, or registered assigns, on the Maturity Date specified above (or earlier as hereinafter referred to), upon the presentation and surrender thereof at the principal office of \_\_\_\_\_, in the City of \_\_\_\_\_ (the "Paying Agent" and "Bond Registrar"), the Principal Amount shown above, and to pay to the registered owner hereof, by check or draft mailed to the registered owner at such registered owner's address as it appears on the bond registration books of the Bond Registrar, or by wire transfer within the continental United States to the registered owner of at least \$1,000,000 principal amount of the Bonds, interest on such Principal Amount from the Dated Date hereof or from April 1 or October 1 next preceding the date of authentication to which interest shall have been paid, unless such date of authentication is an April 1 or October 1 to which interest shall have been paid, in which case from such date, such interest to the Maturity Date specified above being payable on April 1 and October 1 in each year (each, an "Interest Payment Date"), commencing \_\_\_\_\_ 1, \_\_\_\_\_, at the Interest Rate per annum specified above, until payment of such Principal Amount. The interest so payable and punctually paid, or duly provided for, on any Interest Payment Date will be paid to the person in whose name this Bond is registered at the close of business on the Record Date for such interest, which shall be the 15<sup>th</sup> day (whether or not a business day) of the calendar month next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for shall cease to be payable to the registered holder on such Record Date, and may be paid to the person in whose name this Bond is registered at the close of business on a Special Record Date for the payment of such defaulted interest to be fixed by the Bond Registrar, notice whereof being given to the holders not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Bonds of this series may be listed and upon such notice as may be required by such exchange, or as more fully provided in the Resolution (hereinafter defined) or by wire transfer as mentioned above. All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

This Bond shall not be deemed to constitute an indebtedness of the Town within the meaning of any constitutional or statutory provision or limitation and the Town is not obligated to pay the principal of, the premium, if any, or the interest on this Bond except from the Pledged Revenue (hereinafter defined), and the faith and credit of the Town are not pledged to the payment of the principal of, the premium, if any, or the interest on this Bond. The issuance of this Bond shall not directly, indirectly or contingently obligate the Town to levy or to pledge any taxes whatever therefor or to make any appropriation for the payment of the principal of, the premium, if any, or the interest on this Bond except as provided in the Resolution.

ADDITIONAL PROVISIONS OF THIS BOND ARE SET FORTH ON THE REVERSE HEREOF AND SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH HERE.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Resolution until this Bond shall have been authenticated by the execution by the Bond Registrar of the certificate of authentication endorsed hereon.

**IN WITNESS WHEREOF**, the Town of Davie, Florida has caused this Bond to be signed by the manual or facsimile signature of its Mayor and countersigned by the manual or facsimile signature of its Town Clerk and a manual or facsimile of the official seal of the Town to be imprinted hereon.

[SEAL]

**TOWN OF DAVIE, FLORIDA**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Town Clerk

**CERTIFICATION OF AUTHENTICATION**

This Bond is one of the Series \_\_\_\_ Bonds issued under the provisions of the within-mentioned Resolution.

\_\_\_\_\_  
Bond Registrar

By: \_\_\_\_\_  
Authorized Signatory

Date of authentication: \_\_\_\_\_

\* \* \* \* \*

(Reverse Side of Bond)

This Bond is one of a series of Bonds designated "Water and Sewer Revenue Bonds, Series \_\_\_\_" and issued by the Town for the purpose of providing funds, together with any other available funds, for \_\_\_\_\_, and this Bond is issued under and pursuant to that certain resolution adopted by the Town Council of the Town on \_\_\_\_\_ (the "Resolution").

**Mandatory Redemption.** The Bonds maturing on \_\_\_\_\_ are subject to mandatory redemption at 100% of the principal amount thereof, but without premium, on \_\_\_\_\_ 1 of the following years and in the following amounts, together with accrued interest to redemption date:

**[Here insert Amortization Requirements]**

**Optional Redemption.** The Bonds maturing on or after \_\_\_\_\_ 1, \_\_\_\_ may be redeemed prior to their stated maturities, at the option of the Town, from any moneys that may be made available for such purpose, either in whole, on any date on or after \_\_\_\_\_ 1, \_\_\_\_\_, or in part, in any order of maturity selected by the Town, on any Interest Payment Date on or after \_\_\_\_\_ 1, \_\_\_\_\_, on the following redemption dates and at the following redemption prices (expressed as percentages of the principal amount to be redeemed) plus accrued interest to the redemption date as follows:

<u>Redemption Period (Dates Inclusive)</u>				<u>Redemption Price</u>	
_____	1, _____	to _____	_____, _____	_____	%
_____	1, _____	to _____	_____, _____	_____	
_____	1, _____	and thereafter		_____	

If less than all of the Bonds of any one maturity shall be called for redemption, the particular Bonds to be redeemed shall be selected by lot as provided in the Resolution.

This Bond and the interest hereon is payable from and secured solely by a lien on and pledge of the Pledged Revenue and the monies on deposit from time to time in the Funds and Accounts, as such capitalized terms are defined in the Resolution, all in the manner provided in the Resolution. The Town is not obligated to pay this Bond or the interest hereon except from the Pledged Revenue and the monies on deposit from time to time in the Funds and Accounts, and the full faith and credit of the Town is not pledged for the payment of this Bond and this Bond does not constitute an indebtedness of the Town within the meaning of any constitutional, statutory or other provision or limitation; and it is expressly agreed by the holder of this Bond that such holder shall never have the right to require or compel the Town to levy or pledge taxation, in any form whatever, for the payment of the principal of and interest on this Bond or the payment of any sinking fund, reserve or other payments provided for in the Resolution.

It is further agreed between the Town and the holder of this Bond that this Bond and the obligation evidenced hereby shall not constitute a lien upon any property of the Town, but shall constitute a lien only on the Pledged Revenue and the monies on deposit from time to time in the Fund and Accounts, all in the manner provided in the Resolution.

At least thirty (30) days, but not more than forty-five (45) days, before the redemption date of any Bonds, the Town shall cause a notice of such redemption to be (a) filed with the Paying Agent, (b) sent by registered or certified mail or overnight delivery service to registered securities depositories and to national information services that disseminate redemption notices, and (c) mailed, postage prepaid, to all holders of Bonds to be redeemed in whole or in part at their addresses as they appear on the registration books provided for in the Resolution. Failure to give any such notice or any defect therein shall not affect the validity of the proceedings for redemption, except to the extent a Bondholder is prejudiced thereby, and then only with respect to such Bondholder. On the date so designated for redemption, notice having been given in the manner and under the conditions provided in the Resolution, and monies for payment of the redemption price being held in separate accounts by the Paying Agent in trust for the holders of the Bonds to be redeemed, all as provided in the Resolution, the Bonds so called for redemption shall become due and payable at the redemption price provided for the redemption of such Bonds on such date, interest on the Bonds so called for the redemption shall cease to accrue, such Bonds shall not be deemed to be outstanding under the Resolution and shall cease to be entitled to any lien, benefit or security under the Resolution, and the holders of such Bonds shall have no rights in respect thereof, except to receive payment of the redemption price thereof, including accrued interest to the date of redemption.

Additional bonds on a parity with this Bond may be issued by the Town from time to time upon the conditions and within the limitations and in the manner provided in the Resolution.

The original registered owner, and each successive registered owner of this Bond, shall be conclusively deemed to have agreed and consented to the following terms and conditions:

1. The Bond Registrar shall keep books for the registration of the Bonds and for the registration of transfers of the Bonds as provided in the Resolution. This Bond shall be transferable by the registered owner hereof in person or by his duly authorized attorney or legal representative in writing only upon the books of the Town kept by the Bond Registrar and only upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney or legal representative. Upon the transfer of any such Bond, the Bond Registrar shall issue in the name of the transferee a new Bond or Bonds.

2. This Bond shall be registered as to both principal and interest and shall not be registered to "bearer".

3. The Town, the Paying Agent and the Bond Registrar may deem and treat the person in whose name any Bond shall be registered upon the books of the Town kept by the Bond Registrar as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment thereof and for all other purposes whatsoever. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Town, the Paying Agent nor the Bond Registrar shall be affected by any notice to the contrary.

4. At the option of the registered owner hereof and upon surrender hereof at the designated corporate trust office of the Bond Registrar with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney or legal representative, this Bond may be exchanged for a like aggregate principal amount of Bonds of other authorized denominations of the same series, interest rate and maturity.

5. In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Town shall execute and the Bond Registrar shall authenticate and deliver the Bond or Bonds in accordance with the provisions of the Resolution. There shall be no charge for any registration, exchange or transfer of this Bond, but the Town or the Bond Registrar may require payment of a sum sufficient to pay any tax or other governmental charge required to be paid with respect to such registration, exchange or transfer. The Town and the Bond Registrar shall not be required to execute, transfer or exchange this Bond during the period beginning at the close of business on a Record Date (or Special Record Date) an ending at the close of business on the next Interest Payment Date (or date set for payment of interest for which the Special Record Date was set). The Town and the Bond Registrar shall not be required to transfer or exchange this Bond during the fifteen (15) days immediately preceding the date of mailing of notice of redemption of this Bond or after this Bond has been selected for redemption or has matured.

6. The registered owner of this Bond shall have no right to enforce the provisions of the Resolution, or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Resolution, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Resolution.

7. Modifications or alterations of the Resolution or of any resolutions supplemental thereto may be made only to the extent and in the circumstances permitted by the Resolution.

## ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers into \_\_\_\_\_ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to register the transfer of the within Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

NOTICE: Signatures must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or a trust company.

### [FORM OF ABBREVIATION FOR BONDS]

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM - as tenants in common  
TEN ENT - as tenants by the entireties  
JT TEN - as joint tenants with the right of survivorship and not as tenants in common

UNIFORM GIFT MIN ACT - \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)  
under Uniform Gifts to Minors  
Act \_\_\_\_\_  
(State)

Additional abbreviations may also be issued  
though not in the above list.